

REPORT OF THE MARKET MISCONDUCT TRIBUNAL OF HONG KONG

Part II

on whether any market misconduct
in the nature of insider dealing has taken place
in relation to the listed securities of

ASIASEC PROPERTIES LIMITED

formerly known as Dan Form Holdings Company Limited

(Stock Code: 271)

and on other related questions

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<ul style="list-style-type: none"> Loan to Mdm. Cheung-first loan of Joint Funds; photocopy of original Memorandum of Loan; no attempt to locate Mdm. Cheung. 	<p>552</p> <p>553-555</p> <p>556-557</p>
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	Title	Paragraphs
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Title	Paragraphs
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<i>Disbursement of the proceeds of trading in Dan Form shares in Wen's Shenwan account</i>	660-661
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(ii) 7 October 2016-8 November 2016: HK\$5,646,000 of sale proceeds transferred to Wen's HSBC current account;	
(iii) 30 October and 1 November 2016: HK\$4,346,000 of the sales proceeds transferred to Lam's HSB account;	
(iv) 14 November 2016-25 January 2017: HK\$4,096,000 transferred to Chim's HSB account;	
(v) 15 November 2016-27 January 2017: HK\$3,860,527 transferred to the Joint Account ("Joint Funds");	
(vi) 21 November 2016-28 February 2017: HK\$3,223,786.46 transferred to Cynthia Chen's account; HK\$2,806,654.80 from Joint Funds.	
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Title	Paragraphs
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(iii) Loan(s) to Mdm. Cheung	668-672
Conclusion: Tribunal not satisfied (i) loan of RMB 3,200,000 was made to Mdm. Cheung; (ii) Loan Memorandum was a true document.	673
(iv) Payments by Mdm. Cheung to Wen in the Mainland	674
Conclusion: Tribunal not satisfied payments of RMB were made to Wen by Mdm. Cheung.	675
(v) Payments to Lam Wai Ho	
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Consideration of Lam's account	
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Conclusion: payments to Lam intended to conceal provenance of the monies ultimately received by Cynthia Chen.	678
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(vi) Payments to Chim's account- six cheques drawn on Lam's account cleared on and between 14 November 2016 and 25 January 2017.	680
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Disbursement of those funds from Cynthia Chen's HSB account.	682
Nature of the proceeds of dealing in Dan Form shares	
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I. Savings account	686-689
(i) 11 October-1 November 2016: transfer to HSBC account of Wen and Mdm. Li Qian- HK\$395,300.46;	
(ii) 1 and 4 November 2016: transfer to Wen's Grand Investment account- HK\$230,000;	
(iii) 21 and 22 October 2016: withdrawals in cash- HK\$315,000.	
II. Current account	690
(i) 24 October 2016: transfer to Wen Lijing's Shenwan account- HK\$1,300,000.	
Conclusion: Tribunal satisfied disbursement of proceeds of sale of Dan Form shares had the hallmarks of division of monies between Cynthia Chen and Wen.	691

Title	Paragraphs
CHAPTER 16 INSIDER DEALING	692-702
<i>Cynthia Chen</i>	692-696
<ul style="list-style-type: none"> • a ‘connected person’ at all material times; • possessed of inside information relevant to Dan Form and knew that to be the case on 2 September 2016; alternatively, after close of trading on 6 September 2016; in further alternative, before trading on 8 September 2016; • information possessed likely to materially affect Dan Form share price; • disclosed insider information to Wen knowing or having reasonable cause to believe Wen would deal in Dan Form shares; <p>Cynthia Chen culpable of misconduct, contrary to s.270(1)(c) of Ordinance.</p>	
<i>Wen Lide</i>	697-699
<ul style="list-style-type: none"> • dealt in Dan Form shares after 2 September 2016 knowing he was in possession of inside information received from Mdm. Cynthia Chen knowing she was connected to Dan Form, knowing or having reasonable cause to believe she held information as a result of being so connected; • information possessed was specific information not generally known to those who were accustomed to or likely to deal in Dan Form shares but if known would likely to materially affect share price; <p>Wen culpable of misconduct, contrary to s.270(1)(e) of Ordinance.</p>	
<i>Trading in Dan Form shares in Wen’s Shenwan account –</i>	700
<ul style="list-style-type: none"> • buying 1,250,000 Dan Form shares in his Shenwan account on and between 5 September 2016 and 19 September 2016; <p>Wen culpable of misconduct, contrary s.270(1)(e) of Ordinance.</p>	
<i>Trading in Dan Form shares in Wen’s Grand Investment account and Li Qian’s Grand Investment account –</i>	701
<ul style="list-style-type: none"> • buying 250,000 Dan Form shares on 6 September 2016 in Wen’s Grand Investment account; and • buying 50,000 Dan Form shares on 12 September 2016 in Mdm. Li Qian’s Grand Investment account; <p>Wen culpable of misconduct, contrary s.270(1)(e) of Ordinance.</p>	
<i>Directions –</i>	702
Tribunal will give Directions for holding of further hearing to consider making of consequential orders.	

CHAPTER 3

THE LAW

The nature of the proceedings

18. Proceedings in the Market Misconduct Tribunal are civil and inquisitorial.⁵ The function of this Tribunal is not to adjudicate between rival claims or positions but to inquire into the questions of insider dealing identified in the Commission's Notice.

Standard of proof

19. The standard of proof is "the standard of proof applicable to civil proceedings in a court of law", namely on the balance of probabilities.⁶

Burden of proof

20. Neither the Commission nor any Specified Person bears any burden of proof.

The material received and to be considered by the Tribunal

21. Pursuant to section 253(1)(a) of the Ordinance, the Tribunal may-

"(a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law".

Determination of questions of law and fact

22. Section 24 of Schedule 9 of the Ordinance provides that, subject to section 25, at any sitting of the Tribunal:

"(c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone."

Weight of evidence

23. The weight, if any, to be attached to evidence is a matter for the Tribunal as a whole. In determining what weight to attribute to evidence the Tribunal is to have regard to all the

⁵ *Securities and Futures Commission v Cheng Chak Ngok* [2018] 4 HKLRD 612, Cheung JA (as Cheung CJ was then) at pages 626-627, paragraph 7.1.

⁶ Section 252(7) of the Ordinance.

circumstances, in particular to what extent the evidence could not be tested, whether it was supported and for what purpose reliance was placed on the evidence. The task should be approached with common sense, logic and experience.⁷

Failure to cross-examine a witness

24. The general rule is that, in cross-examination, a party should put to witnesses so much of its case as concerned a particular witness. If a witness deposes to a conversation, the cross-examining parties should put to the witness any significant differences from his own case.⁸ That gives the witness the opportunity to explain or otherwise deal with the suggested contradiction. The weight to be attached to the relevant evidence in consequence is a matter for the Tribunal as a whole.

Inferences

25. Given the nature of these proceedings, in drawing inferences the Tribunal does not have to be satisfied that it is the only inference to be drawn from proved facts. That is required in criminal proceedings. Rather, in the circumstances, the Tribunal has to be satisfied that it has been established as a compelling inference. In drawing inferences adverse to a Specified Person of serious misconduct the evidence must be “sufficient to overcome the inherent improbability” that the Specified Person, of good character, conducted himself in that way.⁹

Failure to call a witness

26. Where a party without explanation fails to call as a witness a person, who might reasonably be expected to give direct evidence on the matters in question, it is permissible for the Tribunal to draw adverse inferences. There must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party’s failure to rebut it.¹⁰ The applicable relevant principles are:¹¹

⁷ *Phipson on Evidence* (20th Edition) 7-17.

⁸ *Phipson on Evidence* (20th Edition) 12-35. *Browne v Dunn* (1893) 6 R 67.

⁹ *HKSAR v Lee Ming Tee* (2003) 6 HKCFAR 336, Sir Anthony Mason NPJ at paragraph 72. The alleged misconduct was that senior officers of the Commission deliberately and improperly terminated an investigation into an expert’s conduct in order to avoid the need to make a disclosure which might compromise the expert standing in the trial.

¹⁰ *Prest v Petrodel Resources Limited* [2013] AC 415; Lord Sumption at paragraph 44.

¹¹ *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324, Brooke LJ at page 340, cited with approval by Kwan JA, as Kwan VP was then, in *Pacific Electric Wire & Cable. Co. Ltd. v Texan Management Ltd.* (CACV 95/2012) 17 September 2013, at paragraph 106.

- “(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
- (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
- (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
- (4) If the reason for the witness’s absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.”

Expert evidence

27. The Tribunal has received evidence from two witnesses as experts, Mr. Leung Yiu Man (Brian) and Mr. Christopher Fordham. Each of them has assisted the Tribunal by collating information and by expressing opinions. Whilst their opinions are to be accorded respect, nevertheless the Tribunal is entitled to accept or reject all or part of their evidence. The Tribunal may come to its own conclusions on the matters about which they gave evidence, based on all the evidence.

Lies

28. The fact that a Specified Person has lied in statements made outside the Tribunal, in written statements presented to the Tribunal as evidence or in oral evidence in the Tribunal does not prove the maker of the lie is culpable of the misconduct alleged against that person. People not culpable of the wrongdoing alleged against them sometimes tell lies for a variety of reasons. Nevertheless, it may be a matter of relevance to credibility.

Reasonable opportunity to be heard

29. Section 252(6) of the Ordinance provides that:

“The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) without first giving the person a reasonable opportunity of being heard.”

What constitutes a “reasonable opportunity” is to be determined in accordance with the circumstances of each case, in particular the circumstances of each Specified Person.

Insider dealing

30. Section 270 of the Ordinance provides that:

“(1) Insider dealing in relation to a listed corporation takes place-

- (a) when a person connected with the corporation and having information which he knows is inside information in relation to the corporation-
 - (i) deals in the listed securities of the corporation...
 - (ii) counsels or procures another person to deal in such listed securities..., knowing or having reasonable cause to believe that the other person will deal in them...
- (c) when a person connected with the corporation and knowing that any information is inside information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation...
- (e) when a person who has information which he knows is inside information in relation to the corporation and which he received, directly or indirectly from a person whom he knows is connected with the corporation and whom he knows has reasonable cause to believe held the information as a result of being connected with the corporation-
 - (i) deals in the listed securities of the corporation...; or
 - (ii) counsels or procures another person to deal in such listed securities...
- (f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating ... making a

take-over offer... for the corporation, information to that effect which he knows is inside information in relation to the corporation-

- (i) deals in the listed securities of the corporation ...; or
- (ii) counsels or procures another person to deal in such listed securities”.

31. Section 245(2) of the Ordinance provides that:

“inside information”, in relation to a corporation, means specific information that-

- (a) is about-
 - (i) the corporation;
 - (ii) a shareholder or officer of the corporation; or
 - (iii) the listed securities of the corporation ... and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities;

“listed” means listed on a recognized stock market;

“listed securities” means-

- “(a) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are listed ...”

“listed corporation” means a corporation which has issued securities that are, at the time of any insider dealing in relation to the corporation, listed.

Take-over offer

32. Section 2(1), together with Schedule 1, of the Ordinance provides a definition of “take-over offer”, namely:

“...in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire the shares of the class or a specified proportion of them”.

Connected with a corporation (insider dealing)

33. Section 247 of the Ordinance provides that:

“(1) For the purposes of Division 4, a person shall be regarded as connected with a corporation if, being an individual-

(a) he is a director or employee of the corporation...”

Dealing in listed securities

34. Section 249 of the Ordinance provides that:

“For the purposes of section 245(2) and Division 4, a person shall be regarded as dealing in listed securities ... if, whether as principal or agent, he sells, purchases, exchanges or subscribes for ... any listed securities ... or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities ...”

Specific information

35. Specific information is “information which possesses sufficient particularity to be capable of being identified, defined and unequivocally expressed. In this sense, it is to be contrasted with information which fails to achieve the required degree of specificity because it is too vague, inchoate or speculative.”¹²

36. It follows that there are five elements in insider dealing:¹³

- the corporation concerned must be publicly listed;
- the person concerned must be “connected with the corporation”;
- the person must have information which constitutes “relevant information” (now described as “inside information”);
- the person must know that such information is inside information; and
- the person deals with the corporation’s listed securities with such knowledge.

¹² *Report of the Market Misconduct Tribunal into dealings in the shares of Asia Telemedia Limited* (26 November 2015) of which Hartmann NPJ was Chairman, paragraph 165.

¹³ *Securities and Futures Commission v Yiu Hoi Ying Charles* (2018) 21 HKCFAR 475, the joint judgment of Ribeiro and Fok PJJ at paragraph 36.

Temporal aspects

37. In the joint judgment of Ribeiro and Fok PJJ of the majority in *Securities and Futures Commission v Yiu Hoi Ying Charles* the temporal aspect of the five elements was noted, namely that the definition of insider dealing in section 270 stipulated that:¹⁴

“...the activity of insider dealing takes place at the point in time when the connected person having the relevant information and knowledge deals in the relevant publicly listed securities. This temporal aspect applies to each of the five elements so that, to constitute insider dealing, all the elements must be shown to exist at that point in time.”

Knowledge

38. The Tribunal must be satisfied that at the time that the Specified Person dealt in the shares he knew that the information in his possession was price sensitive. Knowledge may be proved directly or indirectly. It may be inferred from the proved facts and circumstances.

Reasonable cause to believe

39. Proof of reasonable cause to believe that the other person:

- will deal in the securities (section 270(1)(a)(ii) of the Ordinance); or
- will make use of the information for the purpose of dealing (section 270(1)(c) of the Ordinance); or
- held the information as a result of being connected with the corporation (section 270(1)(e) of the Ordinance); or
- is contemplating making a take-over offer for the corporation (section 270(1)(f) of the Ordinance)

requires evidence that would cause a common-sense, right-thinking person to consider sufficient to lead such a person to that belief.

Counsel or procure

40. To counsel is to advise, solicit, encourage or persuade. To procure is to take appropriate steps to ensure that an event occurs.

¹⁴ *Ibid*, paragraph 39.

Likely to materially affect the price of the listed securities

41. In approaching the issue of whether the information was “likely” to materially affect the price of Dan Form’s shares, the Tribunal is to consider whether there was a “real prospect” of it having that affect.

Materially affect the price

42. As was noted in the *Report of the Insider Dealing Tribunal on whether insider dealing took place in relation to the listed securities of Public International Investments Limited*, of which Stock NPJ was chairman, “... the word “materially” speaks for itself - it is to be contrasted with “slight”, “insignificant” and “immaterial”.¹⁵

43. Of the test to be applied, it was stated:¹⁶

“The test is hypothetical in that on the date that the insider acts on inside information, he acts when the investing public, not in possession of the inside information, either does not act, or acts in response to other information or advice. The exercise in determining how the general investor would have behaved on that day, had he been in possession of that information, has necessarily to be an assessment.”

That analysis was cited with approval in the *Report of the Market Misconduct Tribunal into dealings in the shares of Asia Telemedia Limited*.¹⁷

¹⁵ *Report of the Insider Dealing Tribunal on whether insider dealing took place in relation to the listed securities of Public International Investments Limited* (5 August 1995), paragraph 19.4.5.

¹⁶ *Ibid*, paragraph 19.4.2.

¹⁷ *Report of the Market Misconduct Tribunal into dealings in the shares of Asia Telemedia Limited* (26 November 2015), paragraphs 175-176.

CHAPTER 4

INTRODUCTION

44. By a letter, dated 29 February 2024, the Commission enclosed its Notice to the Tribunal, pursuant to section 252(2) of and Schedule 9 to the Ordinance, instituting proceedings to determine whether market misconduct has taken place in relation to the listed securities of Asiasec Properties Limited, formerly known as Dan Form Holdings Company Limited (Stock Code 0271).¹⁸

45. Attached to the letter were:¹⁹

- (1) a Synopsis²⁰; and
- (2) a List of Witnesses²¹.

Together with service of the letter, the Tribunal received 4 sets of Hearing Bundles comprised of:

- (i) Witness Evidence Bundles - 27 lever arch files, comprising 12,657 pages;
- (ii) Exhibits Bundles - 17 lever arch files, comprising 6,984 pages; and
- (iii) Expert Evidence Bundles - 3 lever arch files, comprising 1,656 pages.

List of witnesses

46. The List of Witnesses stipulated the witnesses to be called by the Commission, namely:

- (1) Dai Xiaoming
- (2) Fung Man Yuen, Albert
- (3) Chan Kin
- (4) Lui Wui Hang, Brian
- (5) Lee Wa Lun, Warren
- (6) Lee Seng Hui
- (7) Cheung Lai Har

¹⁸ Tribunal's Miscellaneous Bundle, pages 1A to 1C, and pages 1-11.

¹⁹ *Ibid*, pages 12-26.

²⁰ Appendix II.

²¹ Appendix III.

Expert Witnesses

- (8) Brian Leung
- (9) Chris Fordham

Witness Evidence Bundles

47. The Witness Evidence Bundles contained a total of 19 Records of Interview conducted by the Commission of fourteen persons on various dates in and between 2017 and 2019, including all six of the witnesses (who are not a staff member of the Commission) stipulated to be called by the Commission and three of the four Specified Persons, namely Mdm. Cynthia Chen Si Ying, Mr. Sit Yuk Yin, Ivan and Mdm. Choi Ban Yee. There was no Record of Interview of Mr. Wen Lide.

[Due to translation issues, Cynthia Chen is sometimes spelt as Cynthia Chan (the Cantonese phonetics), and Wen Lide is sometimes spelt as Man Lai Tak (the Cantonese phonetics) in the material provided.]

48. In the Synopsis, it was asserted that, when called by the Commission on 20 September 2019, Mr. Wen Lide had denied dealing in Dan Form shares in 2016 and refused to come to Hong Kong to be interviewed.²²

49. Also, those Bundles included Records of Interview of five persons, other than those that the Commission stipulated it intended to call and the Specified Persons, namely:

- Chim Chor Yue, Winson (Mdm. Cynthia Chen's husband);
- Lam Wai Ho;
- Tsui Hung, Lucy;
- Sit Yim Fei, Cindy; and
- Cheuk Sze Yin.

²² Synopsis - Tribunal's Miscellaneous Bundle; page 23, paragraph 54. Cheung Lai Har's witness statement; Witness Evidence Bundle 20, page 12548, paragraph 36. Note for file: 20 September 2019; Exhibits Bundle 12, page 6770 - telephone#13601701818.

Mr. Wen Lide's contact number is stated to be 13601701818 in his Account Opening Form with Shenyin & Wanguo Securities (Hong Kong) Co., Ltd dated 16 August 2002; Exhibits Bundle 1A, pages 120-126. Translation; Witness Evidence Bundle 18A, pages 10771-10782.

In addition, the Bundles contained witness statements of the seven factual witnesses stipulated in the List of Witnesses.

Exhibits Bundles

50. The Exhibits Bundles included Chronologies of Events provided at the request of the Commission by: Autobest Holdings Limited; Dan Form; Mr. Dai Xiaoming; Yu Ming Investment Management Limited; and BaoQiao Partners Capital Limited. In addition, they included Notices served on multiple persons by the Commission, pursuant to section 183 of the Ordinance, and the returns of those parties, including Mdm. Cynthia Chen and Mr. Winson Chim.

Notice

51. The Notice asserted that, at all material times:

- Mdm. Cynthia Chen (SP1) was the company secretary and secretary to the board of directors of Dan Form and that, thereby, she was “connected with” Dan Form, within the definition provided by section 247(1)(a) of the Ordinance.²³
- Further, that Mr. Wen Lide (SP2) was a relative of Mdm. Cynthia Chen and that his wife was Mdm. Li Qian.
- Mr. Dai Xiaoming was the chairman of the board of directors, the chief executive and an executive director of Dan Form and its controlling shareholder, holding a beneficial interest in 36.45% (the **Sale Shares**) of its issued share capital.

Unsuccessful Acquisition by a potential purchaser referred by G-Resources Group Limited

52. The Notice and the Synopsis described what was said to have been an unsuccessful attempt at the acquisition of Mr. Dai’s shares by a potential purchaser referred by G-Resources Group Limited (“G-Resources”) in the period beginning mid-June 2016. An Announcement was made by Dan Form on 24 June 2016 that trading of Dan Form shares would be halted pending the release of an announcement pursuant to the Hong Kong Code on Takeovers and Mergers, which is inside information in nature. On 28 June 2016, Dan Form announced the potential purchaser’s potential acquisition and trading in Dan Form shares resumed. Negotiations were terminated by Mr. Dai on 18 August 2016, an Announcement in respect of

²³ Notice, paragraph 2(1) and paragraph 25.

which was made on 19 August 2016.²⁴

Tian An Acquisition

53. On 22 September 2016, in a Joint Announcement, Dan Form, Tian An, and Autobest announced (“TA Announcement”) that:²⁵

- (i) Autobest had conditionally agreed to acquire Mr. Dai’s Sale Shares at HK\$2.75 per share; and
- (ii) Yu Ming Investment Management Limited would, on behalf of Autobest, make a conditional mandatory cash offer for all the remaining issued shares of Dan Form at HK\$2.75 per share (“Offer Price”).

54. The TA Announcement noted that the Offer Price represented:

- (i) a premium of approximately 15.06% over the closing price of HK\$2.39 per share on 19 September 2016; and
- (ii) a discount of approximately 31.93% of the unaudited net asset value of the Dan Form group of companies attributable to Dan Form shareholders.

55. The Notice and the Synopsis described communications between Mr. Brian Liu Wui Hang (“Brian Liu”) and Mr. Kin Chan of Argyle Street Management Limited on the one hand and Mr. Dai and Mdm. Cynthia Chen on the other hand, commencing with an email from Mr. Kin Chan, dated 4 August 2016, to Mr. Dai and Mdm. Cynthia Chen, in which Mr. Kin Chan had expressed interest on behalf of Argyle Street Management Limited in acquiring the Sale Shares.²⁶ Those communications continued in the weeks that followed.

56. On 7 August 2016, Mdm. Cynthia Chen was present at the meeting among Mr. Dai, Mr. Kin Chan and Mr. Brian Liu at which the potential acquisition of Mr. Dai’s Sale Shares was discussed.

57. By an email, dated 23 August 2016, Mr. Kin Chan informed Mdm. Cynthia Chen that Argyle Street Management Limited, a private equity fund, was keen to discuss the possibility of buying Mr. Dai’s Sale Shares in Dan Form.²⁷ During the period following, up and until

²⁴ *Ibid*, paragraphs 3-6; Synopsis, paragraphs 6-9.

²⁵ Synopsis, paragraph 17.

²⁶ Notice, paragraph 7.

²⁷ *Ibid*, paragraph 9.

8 September 2016, there were further communications of negotiations between the parties, including Mdm. Cynthia Chen.

58. After the market had closed on 19 September 2016, Autobest, a wholly-owned subsidiary of Tian An, executed a Sale and Purchase Agreement. On 20 September 2016, trading in the shares of Dan Form was suspended, pending the release of an Announcement to be made under the Takeovers Code.²⁸

59. Following the Joint Announcement on 22 September 2016, on 23 September 2016, trading in Dan Form shares resumed, closing at HK\$2.66 per share. That was 11.3% higher than the closing price of HK\$2.39 on the previous day of trading, namely 19 September 2016. Trading volume on 23 September 2016 was 50,653,314 shares, an increase over the 10,101,000 shares traded on 19 September 2016.²⁹

Information held by Mdm. Cynthia Chen

60. The Notice asserted that at the material time Mdm. Cynthia Chen had acquired information about Dan Form that was within the definition of “inside information” in section 245(2) of the Ordinance, being:³⁰

“... specific information about Dan Form, a shareholder of Dan Form and/or the listed securities of Dan Form, which was not generally known to the persons who were accustomed or would be likely to deal in the listed securities of Dan Form before the release of the TA Announcement on 22 September 2016, but would if generally known to them (before the release of the TA Announcement) be likely to materially affect the price of the listed securities of Dan Form.”

61. The Synopsis asserted that the information held by Mdm. Cynthia Chen in relation to Dan Form, and the circumstances in which it was obtained, were all set out below:-

“20. In an email Brian Liu sent to Dai and Cynthia Chen on 2 September 2016, Brian Liu on behalf of an unidentified potential purchaser offered to acquire the Sale Shares and make a general offer for all outstanding Dan Form shares at HK\$2.75 per share.

21. In a mobile instant message Brian Liu sent to Cynthia Chen on 6 September 2016, Brian Liu asked Cynthia Chen to pass on to Dai a new proposal that the price of the

²⁸ *Ibid*, paragraphs 12 and 13.

²⁹ *Ibid*, paragraph 15.

³⁰ *Ibid*, paragraph 17.

offer be reduced to HK\$2.7 per share but due diligence would only begin after a binding sale and purchase agreement had been executed.

22. In a mobile instant message Brian Liu sent to Cynthia Chen on 8 September 2016 at 00:21, Brian Liu informed Cynthia Chen that Kin Chan had spoken to Dai and Kin Chan would bring the potential purchaser to meet Dai on Sunday 11 September 2016. At 02:26 Cynthia Chen replied: “*It looks quite smooth.*”

23. Between 8 September and 11 September 2016, Brian Liu liaised with Cynthia Chen regarding the time on Sunday 11 September 2016 and precise venue in Beijing for Kin Chan, the potential purchaser and Dai to hold the meeting.

24. On 11 September 2016 at 20:55, Brian Liu sent a mobile instant message to Cynthia Chen to inform her that “*The meeting went well today, and chairman said he wants to start due diligence tomorrow*”.

25. On 12 September 2016, Dai informed Cynthia Chen that Tian An and Dai would proceed with the TA Acquisition.

26. On 14 September 2016 at 00:49, Lee Wa Lun Warren (**Warren Lee**) of Yu Ming sent to several parties, as well as Cynthia Chen, a first draft of the sale and purchase agreement for the TA Acquisition.

27. Between 14 September and 18 September 2016, Warren Lee continued to work with the legal representatives of the parties to finalise the sale and purchase agreement.

28. On 19 September 2016, at about 10:30, Cynthia Chen attended an all-party meeting during which the terms of a sale and purchase agreement for the TA Acquisition were finalised.”

62. The Notice went on to assert that Mdm. Cynthia Chen and Mr. Wen Lide were in possession of the information, which they knew was inside information in relation to Dan Form.³¹

Dealings in Dan Form shares by Mr. Wen Lide

63. Of the dealings in Dan Form shares by Mr. Wen Lide, the Notice asserted:³²

³¹ *Ibid*, paragraph 26.

³² *Ibid*, paragraphs 18-22.

[Note: The Commission referred to Shenwan Hongyuan Securities (H.K.) Limited as Shenwen Hongyuan Securities (H.K.) Limited (Shenwen).]

(PURCHASES)

- (a) Between 24 August 2016 and 7³³ September 2016, Mr. Wen Lide acquired:
 - (i) 2,770,000 Dan Form shares, through his securities account (**Shenwen Account**) at Shenwen Hongyuan Securities (H.K.) Limited (**Shenwen**);
 - (ii) 250,000 Dan Form shares, through his securities account (**Grand Account**) at Grand Investment (Securities) Limited (**Grand**); and
 - (iii) 50,000 Dan Form shares, through Li Qian's securities account at Grand (**Li's Account**).
- (b) It was asserted in the Synopsis that Mr. Wen Lide was authorised to operate Mdm. Li Qian's account.³⁴
- (c) During the period from 8 September 2016 to 19 September 2016, Mr. Wen Lide acquired, through the Shenwen Account, a total of 350,000 Dan Form shares at an average price of HK\$2.16 per share.
- (d) On 12 September 2016, Wen acquired, through Li's Account, 50,000 Dan Form shares at an average price of HK\$1.97 per share.

(SALES)

- (e) During the period from 29 September 2016 to 26 October 2016, Mr. Wen Lide disposed of a total of 3,370,000 Dan Form shares comprising:
 - (i) 3,120,000 shares in the Shenwen Account; and
 - (ii) 250,000 shares in the Grand Accountthat were accumulated between 24 August and 19 September 2016, through the Shenwen Account and Grand Account at an average price of HK\$2.7 per share.
- (f) On 29 September 2016, Wen disposed of all 100,000 Dan Form shares kept in Li's Account at an average price of HK\$2.69 per share.

³³ In the Supplemental Statement of Cheung Lai Har dated 8 October 2024, the Commission confirmed that the reference to 5 September 2016 in paragraph 18 of the Notice was a typo, and it should be 7 September 2016 instead. Core Bundle 2; page 20, paragraphs 3 to 5.

³⁴ Synopsis - Tribunal's Miscellaneous Bundle; page 19, paragraph 32.

Payments into Mr. Wen Lide's Shenwan Account

64. Of the payments made into the Shenwan Account of Mr. Wen Lide, the Notice asserted:
- “23. Out of the total of HK\$4,146,000 deposited into the Shenwen Account between 4 July and 12 September 2016 (to settle various purchases of Dan Form shares), HK\$3,652,242 was paid into the Shenwen Account by cheques that were drawn on Wen's account at HSBC during the period from 28 July 2016 to 12 September 2016. Cynthia Chen and/or her husband Chim Chor Yue (**Winson Chim**) wrote the payees' names and the amounts on these cheques and deposited them into the Shenwen Account. In addition, on 24 August 2016, Cynthia Chen paid a sum of HK\$49,541 into the Shenwen Account.”

Disposal of the net proceeds of the sale of shares in Mr. Wen Lide's Shenwan Account

65. Of the disposal of the net proceeds of the sale of shares in Mr. Wen Lide's Shenwan Account, the Notice asserted:

“24. About 47.49% of the net proceeds from Wen's disposal of his holdings in Dan Form shares, that had been accumulated through the Shenwen Account between 24 August and 19 September 2016, were eventually given to Cynthia Chen through the following steps:-

- (1) During the period from 7 October 2016 to 31 October 2016, a total of HK\$6,787,961.40 was transferred from the Shenwen Account to Wen's account at HSBC.
- (2) During the period from 31 October 2016 to 2 November 2016, a total of HK\$4,346,000 in Wen's account at HSBC was transferred to a bank account held under the name of Lam Wai Ho at Hang Seng Bank (**HSB**).
- (3) During the period from 14 November 2016 to 25 January 2017, a total of HK\$4,096,000 in Lam Wai Ho's account at HSB was transferred to Winson Chim's account at HSB.
- (4) During the period from 19 November 2016 to 27 January 2017, a total of HK\$3,696,000 in Winson Chim's HSB account was transferred to a joint account of Cynthia Chen and Winson Chim at HSB (**Joint Account**).

- (5) During the period from 21 November 2016 to 28 February 2017, a total of HK\$3,223,786.46 in the Joint Account was transferred to a HSB account held in Cynthia Chen's sole name."

66. In the result, it was asserted in the Notice that:

"27. By reason of the aforesaid:-

- (1) Cynthia Chen, being connected with Dan Form, having information which she knew was inside information in relation to Dan Form, counselled or procured Wen to acquire Dan Form shares, knowing or having reasonable cause to believe that he would deal in Dan Form shares, and/or disclosed the inside information to Wen, knowing or having reasonable cause to believe that he would make use of the inside information for the purpose of dealing in Dan Form shares.
- (2) Wen, having information which he knew was inside information in relation to Dan Form, and which he received, directly or indirectly, from Cynthia Chen whom he knew was connected with Dan Form and whom he knew or had reasonable cause to believe held the inside information in relation to Dan Form as a result of being connected with Dan Form, dealt in Dan Form shares by acquiring them."

67. In consequence, the Tribunal was invited to determine that:³⁵

- (i) Mdm. Cynthia Chen engaged or may have engaged in market misconduct defined in sections 270(1)(a) and/or 270(1)(c) of the Ordinance.
- (ii) Mr. Wen Lide engaged or may have engaged in market misconduct defined in section 270(1)(e)(i) of the Ordinance.

³⁵ *Ibid*, paragraph 35.

CHAPTER 5

THE COURSE OF THE PROCEEDINGS

Directions

68. Following Preliminary Conferences, held pursuant to section 30 of Schedule 9 of the Ordinance, on 3 May 2024 and 16 May 2024, the Chairman gave directions to the parties, setting down the Inquiry for hearing on 2-6 December 2024 and 9-13 December 2024. In addition, the Commission was directed to file supplemental witness statements in respect of witnesses who had made witness statements previously, identifying by reference to the List of Exhibits in the Hearing Bundles the exhibits to which the witness was referring to in the witness statement. The Specified Persons were directed to file such witness statements and expert report as they wished to adduce at the hearing on or before 22 August 2024. The parties were directed to file such statement in reply as they wished to file on or before 3 October 2024. The Commission was directed to file its Opening Submissions and related documentation on or before 24 October 2024 and each of the Specified Persons to file their Opening Submissions on or before 7 November 2024.

The Commission

69. By a letter, dated 3 July 2024, the Commission informed the Tribunal that it had completed the filing of the last of the 6 supplemental witness statements. On 7 October 2024, the Commission filed sets of updated Hearing Bundles, including additional translation of documents, replacements of inaccurate descriptions of documents and revised Indices comprised of:

- (i) Witness Evidence Bundles - 27 lever arch files, containing 13,276 pages;
- (ii) Exhibits Bundles - 18 lever arch files, containing 7,476 pages; and
- (iii) Expert Evidence Bundles - 7 lever arch files, containing 3,436 pages.

70. By a letter, dated 9 October 2024, the Commission filed with the Tribunal a supplemental statement of Cheung Lai Har, dated 8 October 2024. That was the deadline for doing so, it having been extended in consequence of the extension granted to Mdm. Cynthia Chen to file her witness statement. On 24 October 2024, the Commission filed its Opening Submissions and related documents.

1st Specified Person

71. Having been granted an extension of time to do so, Mdm. Cynthia Chen, the 1st Specified Person, filed her own witness statement with the Tribunal on 29 August 2024. By a letter from Li & Lai, dated 27 November 2024, a supplemental witness statement of Mdm. Cynthia Chen of the same date was provided to the Tribunal, with a request that consent be granted to file and serve it in these proceedings. Attached to the supplemental witness statement was a handwritten document entitled ‘Memorandum of Loan’, which purported to evidence a loan, described as being Renminbi Thirty-Two Million Dollars [320000] (sic) only, between Chim Chor Yue and Cheung Man Yu made on 1 June 2015 for 18 months at an annual interest rate of 12.5%.³⁶

2nd Specified Person

72. The Tribunal received no communication whatsoever from the 2nd Specified Person, Mr. Wen Lide.

The Commission

73. By a letter, dated 29 November 2024, having acknowledged the Tribunal had wide discretionary power to receive and consider evidence, the Commission stated that it did not object to the receipt of the Memorandum of Loan, but reserved its right to make submissions as to the authenticity and/or evidential value to be given to the supplemental statement. Having noted that the hearing of the Inquiry was due to commence on 2 December 2024, the Commission invited the Tribunal to note that in the previous four years the 1st Specified Person had not produced any “contemporaneous or witness evidence in respect of the loan arrangement”. Further, it was observed that due to the lateness of the application, the Commission had not had a chance to check the veracity of the document, that the maker of the Memorandum of Loan was not available for cross-examination and there was no evidence as to the circumstances in which the document was created.³⁷

The 3rd and 4th Specified Persons

74. It having been intimated in a letter from Poon & Cheung to the Tribunal, dated 20 August 2024, that it was intended that the 3rd and 4th Specified Persons admit liability, by direction of the Chairman, in response to their request, the deadline for filing witness

³⁶ Tribunal's Miscellaneous Bundle, pages 40-50A.

³⁷ *Ibid*, pages 52-54.

statements and expert reports was extended to 26 September 2024. By a letter of the latter date, Poon & Cheung informed the Tribunal that the 3rd and 4th Specified Persons had admitted liability in a Draft Statement of Agreed and Admitted Facts prepared by the Commission, in consequence of which they are determined not to provide any witness statements to the Tribunal.

75. However, it was not until it received the Commission's letter, dated 22 November 2024, that the Tribunal was provided with copies of a 'Statement of Agreed and Admitted Facts' and a draft of Orders to be made by the Tribunal entitled, 'Orders Jointly Proposed by the SFC and the 3rd and 4th Specified Persons'. The Tribunal was invited to make orders in terms of the Agreed Proposed Orders, pursuant to section 33 of Schedule 9 of the Ordinance.³⁸

The substantive hearing

76. The substantive hearing having commenced on 2 December 2024, in the course of the hearing it became apparent that not all of the relevant emails passing within Argyle Street Management Limited were available to the Tribunal. In her witness statement, dated 22 February 2024, Mdm. Cheung Lai Har, an Associate Director of the Enforcement Division of the Commission, described a search of Argyle Street Management Limited's premises on 16 March 2017, in which emails had been seized and printed out from Mr. Kin Chan's computer.³⁹ Those emails were part of the Hearing Bundles.

77. In an exchange between the Chairman and Mr. Charlie Liu, Assistant Presenting Officer, it emerged that no emails had been printed from the workstation computer of Mr. Brian Liu on the occasion of the search of Argyle Street Management Limited's premises. Apparently, that was simply because he had not been present at the time of the search, whereas Mr. Kin Chan had been present.⁴⁰

78. Both the original witness statement and supplemental witness statement of Mr. Brian Liu made specific reference to an email that he had sent to Mr. Kin Chan at 11:28 pm on 31

³⁸ Section 33 of Schedule 9 of the Ordinance:

"At any time after any proceedings have been instituted, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if-

(a) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(b) the parties consent to all of the terms of the order."

³⁹ Core Bundle 2; page 6, paragraph 20.

⁴⁰ Transcript; 5 December 2024, pages 6-9.

August 2016, in which he referred to a call he had received from Mdm. Cynthia Chen, in which she had informed him that Mr. Dai wanted to meet Mr. Brian Liu on Friday morning, describing it as urgent. No reference to any exhibit was provided in Mr. Brian Liu's supplemental statement, nor was the email to be found in the voluminous exhibits provided to the Tribunal.

Notice to Argyle Street Management Limited

79. In consequence, the Tribunal issued a Notice, dated 5 December 2024, to Argyle Street Management Limited, pursuant to section 253(1)(b) of the Ordinance, requiring Argyle Street Management Limited to produce to the Tribunal electronic copies of all emails between Mr. Brian Liu and any other parties relating to the sale of Mr. Dai's Sale Shares.⁴¹

80. By an email to the Commission, sent at 10:51 pm on 8 December 2024, Argyle Street Management Limited provided electronic files of 269 emails in the period 28 June to 28 September 2016.⁴² Those files were provided to the Tribunal and the parties by the Commission's letter, dated 10 December 2024. Earlier, on 9 December 2024 copies of some of those emails, dated on and between 23 and 25 August 2016, were added to Core Bundle 1, at pages 99A-99C, and were used in examination and in cross-examination of witnesses.

Mr. Brian Liu - recalled to give further evidence

81. The additional material having been received after the completion of his evidence, Mr. Brian Liu was recalled to give further evidence in respect of that additional material on 11 December 2024.

Additional hearing days

82. The estimated length of the proceedings of 10 hearing days having proved to be woefully inadequate, albeit that two of the four Specified Persons did not participate in the examination of witnesses in the substantive hearing, it proved necessary for the Tribunal to sit a further thirteen days to complete the receipt of oral evidence and to receive oral submissions of the Commission and the 1st Specified Person.

Lucy Tsui

83. By a Notice, dated 23 December 2024, pursuant to section 253(1)(b) of the Ordinance

⁴¹ Appendix IV-Notice, pursuant to section 253(1)(b) of the Ordinance to Argyle Street Management Limited, 5 December 2024.

⁴² Transcript; 9 December 2024, page 1.

the Tribunal required Mdm. Lucy Tsui to give oral evidence. Earlier, in the Hearing Bundles, the Commission had served a record of interview conducted of Mdm. Lucy Tsui on 30 August 2018. At the material time, she was an account executive at Shenwan Hongyuan Securities, or “broker” as Mdm. Cynthia Chen described her, whose clients included Mr. Wen Lide and Mdm. Cynthia Chen.

Audio transcripts of trading orders

84. By a letter, dated 3 January 2025, the Tribunal received from the Commission a revised formatted version of audio transcripts of trading in shares conducted in the accounts of Mr. Wen Lide at Shenwan Hongyuan Securities (H.K.) Limited, and Grand Investment (Securities) Limited (subsequently renamed as Evergrande Securities (Hong Kong) Limited) and his wife, Mdm. Li Qian’s, account at Grand Investment (Securities) Limited (subsequently renamed as Evergrande Securities (Hong Kong) Limited).

85. The 1st Specified Person gave evidence over no less than 6 hearing days.

86. The 2nd Specified Person did not participate and was not represented at all in the proceedings from beginning to end.

Oral Closing Submissions

Failure to cross examine witnesses on material evidence

87. At the outset of oral closing submissions on 22 January 2025, the Chairman raised the issue of criticism made in the Written Closing Submissions of the parties of their respective failures to cross-examine witnesses about material matters.⁴³ In its Written Closing submissions, the Commission invited the Tribunal to place weight on Mdm. Cynthia Chen’s failure to put her case to material witnesses (Mr. Dai, Mr. Fung and Mr. Brian Liu) on factual matters, in particular Mr. Brian Liu’s reports to Mr. Kin Chan in various emails of statements made to him by Mdm. Cynthia Chen in respect of the ongoing communications between the parties about the acquisition of Mr. Dai’s Sale Shares. Mr. S.W. Lee, Presenting Officer, of the Commission (“Mr. Lee”) accepted that in Mdm. Cynthia Chen’s evidence it became apparent, from her denial of having made the statements attributed to her by Mr. Brian Liu, that no cross-examination of Mr. Liu on those issues had been made. Nevertheless, Mr. Lee acknowledged that no point had been taken during or at the end of Mdm. Cynthia Chen’s oral evidence.

⁴³ Transcript; 22 January 2025, pages 1-3.

The recall of Mr. Brian Liu

88. In those circumstances, the Chairman asked Ms. Tse if she wished to apply to have Mr. Brian Liu recalled, so that she could cross-examine him further. Proceedings were adjourned so that Ms. Tse was able to communicate with Mdm. Cynthia Chen, whom the Tribunal was told was in Shanghai. Having informed the Tribunal that instructions had been taken from Mdm. Cynthia Chen, Ms. Tse said, “Mdm. Chen elects not to recall Mr Brian Liu.”⁴⁴

89. Ms. Tse went on to explain, “The reason is that now the evidence has closed, Mr Brian Liu is not prohibited from referring to materials as well as discussing the case with other persons in the present Inquiry. Recalling Mr Brian Liu would serve no useful purpose, as it would not be the same had he been questioned on the same issues in the first place.”

Cash deposits: 5 September 2016 to the HSBC account of Mr. Wen Lide

90. For her part, in her Written Reply Submissions, dated 21 January 2025, Mdm. Cynthia Chen took issue⁴⁵ with the Commission’s reliance on the evidence of Mr. Winson Chim’s role in apparently depositing three sums of cash, namely HK\$78,000 and two deposits of HK\$50,000 each, into the HSBC account of Mr. Wen Lide at 11:59 am, 12:03 pm and 12:04 pm on 5 September 2016, as evidenced by photographs of three bank deposit slips found on his Samsung telephone, which had been seized from him on 16 March 2017.⁴⁶ The Commission relied on that evidence as supporting its case that “... the purchase of the shares must be related to and funded by her in some disguised ways, and that is why the sale proceeds (or some extent of it) ended up in her account.”⁴⁷

91. Ms. Tse invited the Tribunal to ignore that evidence, complaining that, “...the commission had, without explanation at all, failed to put the set documentary exhibit to first specified person at all during this inquiry, but now *seeks* to use such evidence against the first specified person.” She said that because the matter had not been put to Mdm. Cynthia Chen, she did not have the opportunity to give her explanation or answer to whatever point was being made.⁴⁸

92. Mr. Lee pointed out that the evidence now relied on by the Commission was in the

⁴⁴ Transcript; 22 January 2025, page 18.

⁴⁵ 1st Specified Person's Written Reply; pages 4 and 5, paragraphs 5 and 6.

⁴⁶ Exhibits Bundle 4, pages 2270-2273.

⁴⁷ Commission's Written Closing Submissions; page 56, paragraphs 126-127.

⁴⁸ Transcript; 22 January 2025, page 8.

material originally served on the Tribunal and the parties and was to be found in several places. In addition, that evidence was drawn to the attention of Mr. Chim in his record of interview.⁴⁹ Of the failure to cross-examine Mdm. Cynthia Chen on this evidence, Mr. Lee said that he had regard to her overall evidence that she had no knowledge of any specific dealings between Mr. Wen and Mr. Chim. He asserted that the Commission did not “need to put those 3 photos to her”.⁵⁰

Tribunal’s invitation to Mdm. Chen to return to give evidence on the discrete issue.

93. In those circumstances, the Chairman informed Ms. Tse that the Tribunal invited Mdm. Cynthia Chen to return to give evidence, “... on this point that troubles you, that she hasn’t had the opportunity to deal with.”⁵¹

94. For his part, Mr. Lee indicated that he had no objection to Mdm. Cynthia Chen returning to give further evidence on that *point*.

95. Having had the opportunity to take instructions referred to earlier, Ms. Tse informed the Tribunal that Mdm. Cynthia Chen, “...turned down the tribunal’s invitation for her to give evidence on specific documentary evidence that was not put to her”, namely the three deposits of cash.⁵²

96. For her part, Ms. Tse explained:⁵³

“...the invitation cannot mitigate against the unfairness of having to partially reopen the evidence after the parties’ close of evidence, as well as the filing of closing submissions.”

Of the nature of the alleged unfairness, Ms. Tse said:⁵⁴

“The first specified person is well entitled take advantage of the perceived deficiencies of the commission’s case against her. And indeed, she had taken issue with the deficiencies of the commission’s case in that regard. And after she has done so in her closing submissions, to reopen the case, the evidence, to enable the commission to remedy the deficiencies is not a fair course to take...”.

⁴⁹ Witness Evidence Bundle 5; pages 2275-2285, counter #s 1603-1654.

⁵⁰ Transcript; 22 January 2025, page 21.

⁵¹ Transcript; 22 January 2025, page 9.

⁵² Transcript; 22 January 2025, page 16.

⁵³ Transcript; 22 January 2025, page 17.

⁵⁴ Transcript; 22 January 2025, pages 17-18.

CHAPTER 6

A REASONABLE OPPORTUNITY TO BE HEARD

Mr. Wen Lide

97. Mr. Wen Lide did not participate in nor was he represented at any stage of the proceedings, from the service of the Notice on 29 February 2024 to the conclusion of oral closing submissions on 23 January 2025.

98. That conduct was entirely consistent with the approach that Mr. Wen Lide had adopted to the Commission at an earlier stage. In her witness statement, dated 22 February 2024, Mdm. Cheung Lai Har, an Associate Director of the Commission, noted that a colleague had contacted Mr. Wen Lide to arrange for him to be interviewed by the Commission, but Mr. Wen Lide had declined to attend an interview and denied having traded in Dan Form shares in 2016. Attached to her statement was the related telephone attendance note.⁵⁵

99. The ‘Note for file’ of that colleague, Mr. Edmond Tsui stated:⁵⁶

“I, Edmond Tsui called Wen Lide at 10:35 AM on 20 September 2019 at 13601701818.

I requested him to come to Hong Kong for an interview because according to our information he traded Dan Form Holdings Company Limited (271) during August to September in 2016, and so he may know something relevant to our investigation.

He said he was Wen Lide, but he did not trade 271 in 2016 and he did not know anything about the stock. He did not accept my request to come to interview.”

100. Clearly, Mr. Wen Lide’s denial of having traded in Dan Form shares in 2016 is manifestly false. There is overwhelming evidence to the contrary. It was a barefaced, brazen lie.

101. The telephone number contacted by Mr. Tsui, namely 13601701818, was the number recorded as the contact number in the Account Opening form, dated 16 August 2002, with the brokerage Shenyin & Wanguo Securities (Hong Kong) Co., Ltd (**Shenguo Securities**), the earlier iteration of his Shenwan Account.⁵⁷

⁵⁵ Witness Evidence Bundle 20; page 12548, paragraph 36.

⁵⁶ Exhibits Bundle 12, page 6770. Note for file: 20 September 2019.

⁵⁷ Exhibits Bundle 1A, pages 120-126. Translation; Witness Evidence Bundle 18A, pages 10771-10782. Telephone #1360 170 1818.

Service of documents on Mr. Wen Lide

102. In a lengthy affirmation, dated 20 December 2024, Ms. Chan Yan Man, Jasmine, a Counsel of the Commission and an Assistant Presenting Officer, addressed the steps taken by the Commission to serve relevant documents in these proceedings on Mr. Wen Lide on and between 15 March 2024 and 18 December 2024. There were no less than thirty-six separate communications with Mr. Wen Lide. The first five communications were by DHL courier service. Thereafter, there were six communications by Registered Mail of Hong Kong Post. Then, communications were made by both ordinary post of Hong Kong Post and email.

20 March 2024

103. In a letter in simplified Chinese characters to Mr. Wen Lide, dated 15 March 2024, addressed to Room 1502, No. 32, Lane 100, Zhong Tan Road, Shanghai 200061 PRC, the Commission informed him that proceedings had been instituted in this Tribunal on 29 February 2024, in which he was a Specified Person in the proceedings. Attached to the letter were copies of:

- A Notice to the Tribunal, dated 29 February 2024, together with a Chinese translation;
- A Synopsis, dated 29 February 2024;
- A list of witnesses; and
- A list of unused material.

104. In addition, a DVD was enclosed. It contained the Commission's witness evidence, documentary evidence and expert evidence that had been filed with the Tribunal. Finally, the Commission provided an email contact address and telephone number of the writer of the letter should Mr. Wen Lide have any questions to ask.

105. The address to which the package was sent was the same address as provided in the Account Opening form, dated 16 August 2002, for Mr. Wen Lide's account with Shenguo Securities and as reflected on the HSBC bank statements up and until 19 January 2017 for Mr. Wen Lide's HSBC account.⁵⁸ In August 2024, the Commission found that there was a typo in the address written in Chinese, where the 2nd character of the name of the street was wrongly

⁵⁸ Exhibits Bundle 2, page 1169.

stated as “中彈路” instead of “中潭路”. As a result, the Commission re-sent those packages which had not been delivered successfully.

106. Exhibited to the affirmation was material from DHL detailing proof of delivery of the package to Mr. Wen Lide at 11:27 on 20 March 2024, which included a signature acknowledging receipt of the package.

107. The second package of documents from the Commission were successfully delivered to the same consignee at the same address by DHL on 16 April 2024. However, DHL reported on 6 May 2024 that a third package was undeliverable, “due to consignee no longer at address and asked for return as per consignee email (wenlide@126.com) advice”.

108. Returns to request by the SFC for information as to the latest records of Mr. Wen Lide’s email address from Shenwan Hongyuan, dated 28 November 2023, and HSBC, dated 19 December 2023 stipulated that his email address was wenlide@126.com and WENLIDE@126.COM respectively.

109. Hong Kong Post’s Track and Trace system described the delivery by Registered Mail of a package on 16 June 2024 to Mr. Wen Lide’s address in Shanghai. The package included a compliments slip from the SFC, attaching a copy of the Directions of the Tribunal, dated 16 May 2024. Those Directions stipulated that the Inquiry was to commence on 2 December 2024 and provided a timetable for the filing by the Commission and the Specified Persons of witness statements, expert reports and submissions to the Tribunal.

110. From 16 August 2024 all deliveries of packages of documents to Mr. Wen Lide were also sent to him in electronic format by the Commission to his email address, namely wenlide@126.com. The Commission asserted of each and every one of those emails, “Delivery of the email is complete.”

111. From 30 August 2024 onwards, in addition to emails, the Commission sent some of its physical communications to Mr. Wen Lide by ‘Ordinary Post’ of Hong Kong Post. It noted that none of those packages had been returned.

112. By a letter, dated 7 October 2024, sent by ordinary post of the Hong Kong Post, the Commission provided Mr. Wen Lide with a DVD, “containing an electronic copy of the hearing bundles updated as of 30 September 2024.” The Commission invited the Tribunal to note⁵⁹ that,

⁵⁹ Commission's Written Closing Submissions; page 4, paragraphs 5.

although the Tribunal is not subject to those provisions, *Order 65, rule 5(1) of the Rules of the High Court, Cap. 4A*, provides that one mode of service of documents is by ordinary post. Of that mode of service, the Editors of Hong Kong Civil Procedure (2025 Edition) note:

“The addressee of a document is much more likely to receive it if it is posted to him by ordinary prepaid post, since he will have no opportunity to refuse its delivery, than if it is posted by “registered post” or by “recorded delivery”, which will give him the opportunity to decline it. Proof that the letter has been properly addressed, prepaid and posted to the proper address of the person to be served and not returned by the post office affords *prima facie* evidence that it has been duly delivered in the ordinary course of post (See Interpretation and General Clauses Ordinance, s.8)”.

Conclusion

113. We have no hesitation whatsoever in determining that we are satisfied that, pursuant to section 252(6) of the Ordinance, Mr. Wen Lide has been afforded, “a reasonable opportunity of being heard” in these proceedings. That he has not availed himself of that opportunity is entirely a matter for him.

CHAPTER 7

THE SALE OF MR. DAI'S SHARES IN DAN FORM

(i) G-Resources Group Limited / Potential Purchaser

Announcement - 24 June 2016

114. By an Announcement, dated 24 June 2016, entitled 'TRADING HALT', issued in the name of Mdm. Cynthia Chen as company secretary, Dan Form stated that it had requested that trading in the shares of the company be halted with effect from 9:00 am on Friday, 24 June 2016, pending the release of an announcement pursuant to the Hong Kong Code on Takeovers and Mergers, which is Inside Information in nature. The closing price of Dan Form shares on 23 June 2016 was HK\$1.48 per share on a turnover volume of 2,346,000 shares.

Announcement - 28 June 2016

115. On 28 June 2016, Dan Form issued another announcement in the name of Mdm. Cynthia Chen in which it stated that the company had requested The Stock Exchange of Hong Kong Limited ("SEHK") to permit the resumption of trading in its shares at 1:00 pm that day. In addition, the company announced that Mr. Dai Xiaoming, its controlling shareholder, Executive Director and Chief Executive Officer, said that an independent third party ("Potential Purchaser") had recently offered to purchase his entire interests in the company, in aggregate approximately 36.45% of the company's issued shares, and that the parties had commenced formal negotiation, which may or may not lead to an agreement or transaction. Further, that if the possible acquisition resulted in the Potential Purchaser holding 30% or more of the issued shares, the Potential Purchaser would be required to make a general offer to acquire all the issued shares of the company.⁶⁰ The closing price of Dan Form shares on 28 June 2016 was HK\$1.93 per share, on a turnover volume of 32,208,000 shares. That represented an increase of +30.41% over the previous closing price.⁶¹

116. In her oral evidence, in response to questions posed by the Chairman at the end of her evidence, Mdm. Cynthia Chen described how she had become involved in the steps taken to publish the Announcement made by Dan Form on 24 June 2016. On the night of 23 June 2016, Mr. Dai had informed her that there was "a potential buyer with the intention" of buying his

⁶⁰ Core Bundle 1, pages 1-3.

⁶¹ Core Bundle 1, page 4.

shares. She was asked to communicate with the company's lawyers.⁶² She caused her assistant to email a draft of the proposed Announcement to the directors. In return, they would respond by indicating agreement. If there was a board resolution, it would have been drafted by the company lawyers. She was also involved in the preparations that led to the publishing of the Announcements by Dan Form on 28 June 2016 and 28 July 2016 and the Announcement "Termination of negotiations" made on 19 August 2016.

117. Of the closing price of Dan Form shares on 28 June 2016, and the 30.41% increase that represented over the previous closing price, Mdm. Cynthia Chen said in her witness statement that, "I was not aware of and did not care about the increment in share price and trading volume of the Company's shares."⁶³ In her oral evidence-in-chief, she explained that she was the company secretary, whereas Mr. Fung was the financial controller of the company, "I mainly focus on paperworks such as suspension and announcement. Therefore, I didn't care about the share price and the trading volume of the company."⁶⁴

118. Mr. Dai said that in mid-June 2016 he had been approached by Mr. Chiu Tao, a director of G-Resources and informed that a potential investor ("Potential Investor") was interested in acquiring his Sale Shares. A few days later he and Mr. Chiu Tao met and discussed the terms of the potential acquisition, during which a proposed acquisition price of HK\$2.60 per share was discussed.⁶⁵ On 23 June 2016, he had informed Mdm. Cynthia Chen of the potential acquisition. The company applied for a temporary suspension of trading in its shares. On 24 June 2016, Dan Form had made the Announcement referred to earlier.

27 June 2016

119. On 27 June 2016, a meeting was held between Mr. Dai, Mdm. Cynthia Chen, the company secretary, Mr. Albert Fung, the Chief Financial Officer, Ms. Cheng Qian, the secretary of Mr. Dai, Ms. Monica Lin of BaoQiao Partners Holdings Limited, Dan Form's financial consultants, and representatives of Stephenson Harwood, Dan Form's lawyers. Mdm. Cynthia Chen participated in the meeting as company secretary, providing such information as Mr. Dai required. Mr. Dai said that a proposed acquisition price of HK\$2.60 was mentioned, but no conclusions were reached as to terms and final price.⁶⁶

⁶² Transcript; 16 January 2025, pages 2-3.

⁶³ Core Bundle 2; page 176, paragraph 15.

⁶⁴ Transcript; 9 January 2025, pages 68-69.

⁶⁵ Witness Evidence Bundle 11A; page 6085-14, paragraph 4(a). Mr. Dai's supplemental witness statement.

⁶⁶ *Ibid*, page 6085-15, paragraph 4(e). Exhibit Bundle 1A, pages 74-75.

120. Following that meeting, a second meeting was held. In addition to Mr. Dai's description in his witness statement of those events, a Chronology of Events attached to two letters to the Commission, both dated 20 October 2016, from Stephenson Harwood, acting on behalf of Mr Dai and Dan Form respectively⁶⁷, also provided a description. That meeting was between:

- the Potential Purchaser, represented by Mr. Stephen Yeung and Mr. David Fung, and its legal advisor, Clifford Chance;
- G-Resources;
- Dan Form represented by Mr. Dai, Mdm. Cynthia Chen, Mr. Albert Fung, Ms. Cheng Qian and a representative of BaoQiao Partners Holdings Limited.

121. Mr. Dai said that on 29 June 2016, Mdm. Cynthia Chen had forwarded to him a draft sale and purchase contract sent by Clifford Chance to Stephenson Harwood. It stipulated a proposed purchase price of HK\$2.50.⁶⁸ Of 29 June 2016, the Chronology of Events stated:⁶⁹

“Clifford Chance circulated the first draft sale and purchase agreement to SH, who circulated the same draft sale and purchase agreement to Mr. Dai through the Company Secretary on the same day.”

122. For her part, Mdm. Cynthia Chen said that she had been present at a meeting, held on a date between the Announcements of 24 June 2016 and 28 June 2016, at the company's offices when the boss of G-Resources, Mr. Zhao Du (mandarin phonetics of Chiu Tao), was present, as were Mr. Dai and Mr. Fung. She thought that a non-disclosure agreement had been signed. She could not recall if a purchase price offer was discussed. After the resumption of trading on 28 June 2016 she thought that G-Resources had provided a draft Sale and Purchase Agreement.⁷⁰

Announcement - 28 July 2016

123. On 28 July 2016, Dan Form published an Announcement Update of discussions with respect to the potential acquisition. The discussions were still on-going but no formal or definitive agreement had been entered into between the parties.⁷¹

⁶⁷ Exhibits Bundle 1A, pages 71-75 and 80-85.

⁶⁸ *Ibid*, page 6085-18, paragraph 4(g).

⁶⁹ Core Bundle 1; pages 71 and 81, paragraph 8.

⁷⁰ Transcript; 16 January 2025, pages 14-19.

⁷¹ Witness Evidence Bundle 2, pages 806-807.

124. Mr. Dai said that on 18 August 2016 he and the Potential Investor decided to terminate discussions regarding the potential acquisition. Mr. Dai said that his impression was that the main points of disagreements were “primarily related to the sale price” and the Potential Investor’s intention to avoid making a mandatory general offer.⁷²

Announcements - 19 August 2016

125. On 19 August 2016, Dan Form published two Announcements.⁷³ First, an ‘Update’ of discussions, in the name of Mdm. Cynthia Chen as company secretary, in which it was stated that the company had been informed by the controlling shareholder that, on 18 August 2016, the negotiations in respect of the possible acquisition of Mr. Dai’s shares had been terminated. The closing price of Dan Form shares on 19 August 2016 was HK\$1.77 per share, whereas the closing price on 22 August 2016 was HK\$1.62 per share. That represented a fall in price from the previous closing price of 8.475%.

126. For her part, Mdm. Cynthia Chen testified that Mr. Dai had informed her and Mr. Fung on 19 August 2016 to make the Announcement. Mr. Dai said that the discussions between the parties had stopped. She did not remember when on 19 August 2016 he had told her that. She said that she knew that the Announcement had to be made quickly, and it was published that day.⁷⁴

127. Secondly, an Announcement published after the close of trading in the name of Mr. Dai entitled, ‘Inside Information Announcement Profit Warning’, in which it was stated that:

“...despite the Group’s operating profit increases in the first half of the year 2016, due to the change in fair value of investment properties in accordance with the Hong Kong Financial Reporting Standards, the Group is expected to record consolidated net loss for the Period as compared with the consolidated net profit for the corresponding period last year.”

(ii) Argyle Street Management Limited

128. The Tribunal received evidence from both Mr. Kin Chan and Mr. Brian Liu, respectively the Chief Investment Officer and founder and a vice-president at the material time (who has subsequently become an executive director) of Argyle Street Management Limited.

⁷² Witness Evidence Bundle 11A; page 6077, paragraph 4(k).

⁷³ Core Bundle 1, pages 7-10.

⁷⁴ Transcript; 16 January 2025, pages 12-13.

Mr. Kin Chan

129. Mr. Kin Chan was a co-founder of ASM in 2002. ASM was a fund that specialised in identifying and investing in undervalued assets. It determined Dan Form to hold such assets. The share price of Dan Form did not reflect the value of the underlying assets of the company. ASM was a long-standing minority shareholder of Dan Form, having become a shareholder in 2007. He explained that at the time the share price had been about HK\$1 per share, whereas ASM believed it should be about HK\$3 per share.⁷⁵ He had first met Mr. Dai in 2015 when he attended the AGM of Dan Form and had succeeded in pressing the company to issue a dividend. He had asked questions, but not in Mandarin.⁷⁶ On Mr. Dai's instructions, Mdm. Cynthia Chen had acted as an intermediary to facilitate communications between Mr. Dai and himself.⁷⁷ Mr. Kin Chan said that in 2015 his Mandarin was much worse than it was now. So, Mdm. Cynthia Chen often attended meetings to facilitate their conversation. He said that he had probably met Mr. Dai five times. Except for the meeting in Beijing he said, "... every single time, Mdm. Chen was, I think, at those meetings."⁷⁸

Mdm. Cynthia Chen's relationship with Mr. Dai

130. Of Mdm. Cynthia Chen's relationship with Mr. Dai. Mr. Kin Chan said, "...they're obviously very close professionally...she knows a lot about what's going on in the company". He added:⁷⁹

"...she's clearly very capable and very knowledgeable about the company, and Mr. Dai relies on her quite a lot. I mean, like Mr. Dai didn't turn to other people in the meeting for inputs, for instance."

131. For his part, in his oral evidence-in-chief, in explaining why he sent WhatsApp messages to Mdm. Cynthia Chen not to Mr. Dai, Mr. Brian Liu said:⁸⁰

"Because she has been acting as Mr Dai's conduit in terms of the communication between ASM and Mr Dai. So I was assuming that she ...represents Mr Dai and she would pass the message to Mr Dai."

⁷⁵ Transcript; 4 December 2024, page 90.

⁷⁶ *Ibid*, pages 91 to 94.

⁷⁷ Core Bundle 2; page 59, paragraph 3.

⁷⁸ Transcript; 4 December 2024, pages 94-96.

⁷⁹ Transcript; 4 December 2024, pages 95-96.

⁸⁰ Transcript; 6 December 2024, page 91.

Mr. Brian Liu

132. Mr. Brian Liu graduated from Chicago University in 2011 with a degree in economics, after which he joined ASM. In 2016 he was a vice president of ASM. His main responsibility was to look for undervalued companies in Hong Kong, Indonesia and other markets suitable for investment.

133. An Announcement, dated 24 December 2014, by Dan Form of the disposal of houses and apartments in the development at Redhill Peninsula, in which it held an interest, prompted Mr. Brian Liu to perform an analysis of the valuation of Dan Form's assets from publicly available data.⁸¹ As noted earlier, by that date ASM was a long-standing minority shareholder of Dan Form. If the sales were successful, the share price of the company would be re-rated significantly.⁸² In addition, Dan Form had a one-third stake in two industrial buildings in Ap Lei Chau, it owned an office building in Tsim Sha Tsui and a stake in an office building in Wanchai.⁸³ As a result, ASM became an active minority shareholder in Dan Form. Mr. Brian Liu wrote emails and letters to the company, urging it to buy back its shares and to pay dividends, and he attended the Annual General Meeting of the company. The company agreed to pay dividends in 2016.⁸⁴ As a result of such representations, he and Mr. Kin Chan came to know Mr. Dai and Mdm. Cynthia Chen.

'Kicking the tire'

134. Having become aware of the Announcement by Dan Form, dated 28 June 2016, of the resumption of trading in its shares following its Announcement of a disclosure by Mr. Dai that he and an independent third-party were in discussions for the acquisition of his 36.45% holding of the shares of Dan Form, ASM calculated that, if Mr. Dai was prepared to discuss selling to one party, he might entertain an approach from ASM. As Mr. Brian Liu put it, ASM decided to "...kick the tire, so to speak".⁸⁵

4 August 2016 - email to Mr. Dai and Mdm. Cynthia Chen

135. As a result, on Mr. Kin Chan's instructions, Mr. Brian Liu sent an email in Chinese, dated 4 August 2016, to Mr. Dai and Mdm. Cynthia Chen, copied to Mr. Kin Chan, in which

⁸¹ Exhibits Bundle 11, pages 6523-6524.

⁸² Transcript; 6 December 2024, page 10.

⁸³ Transcript; 5 December 2024, pages 126-127.

⁸⁴ Transcript; 6 December 2024, pages 13-14.

⁸⁵ *Ibid*, page 18.

the ‘Subject’ was described as:⁸⁶

“About: Intention to acquire all of your equities in Dan Form in (sic) a price of HK\$2 per share.”

136. In the text of the email, having referred to the fact of the Announcements by Dan Form, dated 28 June 2016 and 28 July 2016, of the discussions between Mr. Dai and an independent third-party, Mr. Brian Liu stated we “...hope to negotiate with you” and that, “Preconditions for the acquisition include: our company accepts the results of due diligence done by us and the total amount of price and payment methods will be subject to a formal agreement.” ASM was willing to sign a non-disclosure agreement.

137. Mr. Dai said that he had had discussions previously with Mr. Kin Chan in respect of shareholder matters and had known him for several years.⁸⁷

138. For her part, Mdm. Cynthia Chen acknowledged that, having read the email, she knew that ASM had expressed an intention to acquire Mr. Dai’s shares at HK\$2 per share.⁸⁸ On Mr. Dai’s instructions she had forwarded Mr. Brian Liu’s email, dated 4 August 2016 to the members of the Board of Directors of Dan Form in an email and a Memorandum dated 6 and 5 August 2016 respectively.⁸⁹

Mdm. Cynthia Chen’s relationship with Mr. Brian Liu

139. Of her relationship with Mr. Brian Liu, Mdm. Cynthia Chen said he was a representative of ASM, of whom she was “quite afraid” because he often made her work extremely hard. He was “quite aggressive and often be impolite to Mr. Dai”.⁹⁰ He was perceived as “a troublemaker”.⁹¹ Mdm. Cynthia Chen explained, “whenever I saw him, he will always brought up hostile takeovers of the company.”⁹² In inviting her to attend the meeting between the parties at the Shangri-La hotel, Mr. Dai had said in Mandarin, “Let’s see what they want to do.”⁹³

Arrangements to meet

140. Mr. Kin Chan said, that after the email had been sent on 4 August 2016 to Mr. Dai and

⁸⁶ Core Bundle 1, pages 131 and 183.

⁸⁷ Core Bundle 2; page 39, paragraph 4 (i)(iv).

⁸⁸ Transcript; 13 January 2025, pages 48-49.

⁸⁹ Transcript; 13 January 2025, page 50. Core bundle 1, pages 180-183.

⁹⁰ Transcript; 9 January 2025, page 74.

⁹¹ Transcript; 9 January 2025, page 78.

⁹² *Ibid.*

⁹³ *Ibid.*

Mdm. Cynthia Chen, he had asked Mr. Brian Liu to contact Mdm. Cynthia Chen to arrange a meeting with Mr. Dai.⁹⁴ There followed contacts between Mr. Brian Liu and Mdm. Cynthia Chen to arrange a meeting between the parties, including contact evidenced by WhatsApp messages at 22:37 on 6 August 2016, in which Mr. Brian Liu sought Mdm. Cynthia Chen's confirmation that the meeting was to take place at 3 pm on Sunday at the Island Shangri-La hotel.⁹⁵

141. Mdm. Cynthia Chen said that she did not think that the meeting had been arranged for discussion of ASM's acquisition of Mr. Dai's shares in Dan Form. Rather, it was to maintain company/shareholder relationship. That is why she had been invited to the meeting. She did not think there was any language barrier between Mr. Dai and Mr. Kin Chan. The latter's Mandarin was "average", albeit that he spoke with a very heavy Hong Kong accent.⁹⁶

Island Shangri-La hotel meeting: 7 August 2016

142. The meeting was held in the Ground floor lounge at the Island Shangri-La hotel on the afternoon of Sunday, 7 August 2016, attended by Mr. Dai, Mdm. Chen, Mr. Kin Chan and Mr. Brian Liu. For his part, Mr. Dai said that: "Although CHAN Kin's Mandarin is not very good and I only speak Mandarin, we were able to communicate directly for the most part, so Ms. Chen only helped me interpret with Chan Kin when necessary during the entire discussion."⁹⁷

143. Of the discussions, Mr. Dai said, "I proposed to ASM to sell the Sale Shares at the price of HKD3.00 per share, but I did not believe at that time that ASM had sufficient funds for the acquisition. CHAN Kin in turn, indicated that he would later propose a purchase price to me that would satisfy me."⁹⁸

144. Mr. Kin Chan said that at the meeting he had spoken in "bad Mandarin", which Mdm. Cynthia Chen had clarified with Mr. Dai. He estimated that Mr. Dai would understand 50% to 60% of what he said, but that, "Madam Chen is very important, making sure he understood 100 per cent."⁹⁹

⁹⁴ Core Bundle 2; page 61, paragraph 8.

⁹⁵ Core Bundle 1; pages 185 and 204A.

⁹⁶ Transcript; 9 January 2025, pages 79-80.

⁹⁷ Core Bundle 2; page 40, paragraph 4(j).

⁹⁸ Core Bundle 2; pages 40 to 41, paragraph 4(j).

⁹⁹ Transcript; 4 December 2024, pages 108-109.

Mr. Brian Liu's account of the meeting

145. In an email, sent at 10:20 pm on Sunday, 7 August 2016 to Mr. Kin Chan and others at ASM, Mr. Brian Liu summarised the earlier meeting between the parties at the Shangri-La hotel:¹⁰⁰

“Kin and I met Chairman Dai of Dan Form.

- * Dai is looking to sell his 36% stake in Dan Form. His offer is \$3/share, while our bid is \$2/share.
- * He is discussing with another potential buyer (we don't know who that is)
- * If we buy, he wants us to retain the current management for 1 year
- * Dai cannot sell until Aug 23 (the end of black-out period)
- * We will re-do our due diligence on its hundreds of assets. Alex and I are compiling a complete land search of all of Dan Form's properties”

146. Mr. Kin Chan said that in re-reading the email he realised that Mr. Brian Liu had missed out one important point in his summary, namely that Mr. Dai had said, “You own 3.5 per cent of my shares; how do you get the money to buy the entire company?” For his part, he replied that ASM had done deals in various consortia in the UK and in Singapore, one of which was for US\$1 billion. He estimated that the proposed deal with Mr. Dai would require raising US\$400 million, of which ASM would contribute 10%-20%.¹⁰¹

147. For her part, Mdm. Cynthia Chen said that the meeting was “not exactly very friendly” and had ended “not rather happily”.¹⁰² In response to what she said was Mr. Kin Chan's assertion that, “...even if Mr Dai did not want to meet, Mr Chan would still have been able to do whatever he wanted”, she asserted that Mr. Dai had said, “Well, you might think that you have the ability to do whatever you want, but still that might not be the case.”¹⁰³

ASM's attempts to form a consortium

148. In an immediate response by email to Mr. Brian Liu sent at 10:22 pm on 7 August 2016,

¹⁰⁰ Witness Evidence Bundle 15, page 9009.

¹⁰¹ Transcript; 4 December 2024, pages 114-115.

¹⁰² Transcript; 10 January 2025, page 5.

¹⁰³ *Ibid*, pages 8-9.

Mr. Kin Chan wrote:¹⁰⁴

“We need to put together a presentation asap for co-investors.

Talked to Seng Hui. He’s interested.

I intend to talk to VT, RGM, BTS.

This is a \$400 mm deal.

Brian, talk to Warren as well.”

(i) Allied Group - Mr. Lee Seng Hui

9 and 16 August 2016

149. Attached to an email, dated 9 August 2016, sent by Mr. Brian Liu and forwarded by Mr. Kin Chan to Mr. Warren Lee, at Yu Ming Investment Management Limited, and Mr. Lee Seng Hui, at the Allied Group, were various analyses on the valuation of Dan Form, in which the net asset value was calculated to be HK\$3.69 per share, without taking into account the value of the listed shell.¹⁰⁵ On 12 August 2016, Mr. Kin Chan met Mr. Warren Lee at Yu Ming Investment Management Limited’s offices to discuss the valuation of Dan Form.¹⁰⁶ By an email, dated 16 August 2016, Mr. Kin Chan sent an updated valuation of Dan form to the same recipients as his earlier email of 9 August 2016. The revised net asset value was HK\$3.70 per share.¹⁰⁷

20 August 2016

150. Mr. Lee Seng Hui said that he met Mr. Kin Chan and Mr. Warren Lee at his offices in Allied Kajima building on 20 August 2016.¹⁰⁸ The Chronology prepared by P.C. Woo & Co. stated that the meeting occurred at 11 am. Mr. Kin Chan invited Mr. Lee Seng Hui to join the consortium, proposing an offer price in the range of HK\$2.25-HK\$2.50 per Dan Form share.¹⁰⁹

(ii) Other co-investors

151. By an email sent at 10:14 on 21 August 2016, Mr. Kin Chan instructed Mr. Brian Liu and others:

¹⁰⁴ Witness Evidence Bundle 15, page 9009.

¹⁰⁵ Core Bundle 1, pages 97.1-97.5.

¹⁰⁶ Exhibits Bundle 1A, page 90.

¹⁰⁷ Core Bundle 1, pages 97.6-97.9.

¹⁰⁸ Core Bundle 2; page 86, paragraph 4(c).

¹⁰⁹ Exhibits Bundle 1A, page 38.

“Put together Dan Form presentation ASAP.

Make sure they sign confidentiality before we show them the presentation. We must keep the name confidential...

Brian/Justin/Allen-please reach out to them ASAP.”

Mr. Kin Chan listed five potential co-investors to be contacted.¹¹⁰

19 August 2016 Announcement: termination of discussions

152. As noted earlier, by an Announcement published on 19 August 2016, Dan Form stated that it had been informed by Mr. Dai that the discussions between Mr. Dai and an independent third party for the acquisition of his 36.45% of the shares of Dan Form had been terminated on 18 August 2016.

ASM’s resumed attempt to acquire Mr. Dai’s shares in Dan Form

20 August 2016

153. Shortly after his meeting with Mr. Lee Seng Hui in the morning of 20 August 2016, Mr. Kin Chan sent an email to Mr. Brian Liu at 1:25 pm with the Subject: Dan Form:¹¹¹

“Please contact Cynthia ASAP.

Tell her the following:

- We are sorry that the other deal didn’t go through. We are still keen to do the deal with them
- \$3/share is a bit high
- We will do this deal if he agrees to the following structure
 - We launch a GO at \$2.XX share and he gives us the irrevocable undertaking to sell
 - If we raise the GO price, he will benefit as well
 - No dividend or distribution
 - If we get to 50%, we take over board

¹¹⁰ Core Bundle 3, Page 3.

¹¹¹ Core Bundle 3, page 1.

- We agree to keep management team for 1 year
- Exclusivity for 3 months
- 2 weeks of due diligence

... I am travelling for two weeks.”

154. By an email to Mr. Jason Wah, Mr. Brian Liu and Mr. Justin Poon, sent at 1:24 pm on Saturday, 20 August 2016, Mr. Kin Chan directed them: ¹¹²

“Buy as much as we can up to 4.99% if 1.85 or below. Buy aggressively.

We are potential bidder so we can buy.”

22 August 2016

155. In an email from Mr. Brian Liu, sent at 10:29 am on 22 August 2016, to Mr. Kin Chan, the former reported: ¹¹³

“Kin,

I spoke to Cynthia. She sounded surprised that we are still interested, given that ASM is a fund.

She said the price will be “closer to \$3 than \$2”, or Dai won’t be interested to talk.

She also mentioned that ASM is \$1bn fund, and questioned if we have enough cash to make GO.

She said she will talk to Dai.”

156. In his oral testimony, Mr. Brian Liu confirmed that he had conveyed the messages to Mdm. Cynthia Chen that Mr. Kin Chan had directed him to pass on in his email sent at 1:25 pm on 20 August 2016. The email to Mr. Kin Chan, sent at 10:29 am on 22 August 2016, was his report of his contact with Mdm. Cynthia Chen. From the style of his report, he thought the contact was by telephone. If he had met her, he would have said so. Of the surprise she expressed of ASM’s interest, he said that he thought that was probably because the funds that she had dealt with were not normally interested in taking over an entire company. Rather they were interested in making a profit from trading the shares. Her statements that, “...the price

¹¹² Core Bundle 1, page 98.

¹¹³ Core Bundle 3, page 18.

will be ‘closer to \$3 than \$2’”, spoke for themselves.¹¹⁴

157. In cross-examination, it was suggested to Mr. Brian Liu that Mdm. Cynthia Chen had not said that she was surprised that ASM was still interested, given that ASM was a fund. It was suggested that was a guess on his part. He answered:¹¹⁵

“That’s not my guess of what Cynthia said. That’s what Cynthia told me. Cynthia told me that she was surprised because, given that ASM is a fund. I was stating a fact, I was not speculating.”

158. In further cross-examination, it was suggested that Mdm. Cynthia Chen had said “...the price would be closer to 3 than 2 because Dai’s proposal was closer to 3 than to 2 ... Or else Mr Dai would not be interested to talk” He said, “Yes, I wrote that... in an email from myself to Kin.” Of course, Mr. Dai’s proposal was a price of HK\$3, not a price closer to HK\$3.¹¹⁶

159. However, in her oral evidence-in-chief, when asked if she had said “...the price will be ‘closer to \$3 than \$2’, or Dai won’t be interested to talk”; that ASM is a \$1 billion fund; and queried if ASM had enough cash to make a general offer, Mdm. Cynthia Chen said: “I definitely would not have said that.”¹¹⁷

160. Specifically of the issue of whether or not she had said to Mr. Brian Liu that the “price will be closer to \$3 and \$2”, she said:¹¹⁸

“Definitely not because I would not have told him anything about the price, and that’s also not within my terms of office.”

161. Of the statement by Mr. Brian Liu, that she had said that she would “talk to Dai”, Mdm. Cynthia Chen said that if this had been a conversation with a minority shareholder making a similar call then she would have courteously mentioned that she would, “convey this to Mr Dai.”¹¹⁹ However, she had not done so. She explained, “in our company, only Putonghua is spoken. So, when outsiders want to say anything to the board or to the chairman, then they would have to do so by way of letters or emails.”¹²⁰

¹¹⁴ Transcript; 11 December 2024, pages 36-38.

¹¹⁵ Transcript; 11 December 2024, page 86.

¹¹⁶ Transcript; 11 December 2024, pages 87-88.

¹¹⁷ Transcript; 10 January 2025, page 12.

¹¹⁸ Transcript; 10 January 2025, page 14.

¹¹⁹ Transcript; 10 January 2025, page 15.

¹²⁰ Transcript; 10 January 2025, pages 15-16.

162. In an email to Mr. Kin Chan, sent at 2:42 pm on 22 August 2016 under the Subject: ‘Dan Form / spoke to Cynthia’, Mr. Brian Liu reported:¹²¹

“Kin,

I spoke to Cynthia again.

Told her that we can “talk about” \$2.5, subject to our proposed structure. She asked if we have “flexibility”, and said we will probably need to increase “a bit more”.

Told her that we have various sources of funding. Told her we raised \$200mm for ARMS last year. Told her that upfront cash is required for GO in HK (she is aware too).

She is aware of the hostile ARMS deal and asked what happened. I told her our ARMS story. Told her we want to try to do a friendly deal with Dai.

She will meet with Dai tomorrow for board meeting.”

163. In his oral evidence, Mr. Brian Liu confirmed that the email was his report of another conversation that he had with Mdm. Cynthia Chen. Of his reference that the parties could ““talk about” \$2.5 subject to our proposed structure”, he said that must have been “on Kin’s instructions”. He intended to convey the meaning that a price of HK\$2.5 could be discussed. The reference to “subject to our proposed structure” was a reference to the structure described in the earlier email from Kin Chan at 1:25 pm on 20 August 2016.¹²²

164. Having been referred to his WhatsApp messages to Mdm. Cynthia Chen at 14:04 on 22 August 2016, namely: “It’s very noisy here.” followed by, “I’ll call you later.”, Mr. Brian Liu agreed that he had spoken to Mdm. Cynthia Chen first and then reported the conversation to Mr. Kin Chan.¹²³

165. In her oral evidence-in-chief, in response to the question of whether she had asked Mr. Brian Liu if ASM had “flexibility”, in the context of ASM’s statements that the parties could “talk about \$2.5” Mdm. Cynthia Chen said:¹²⁴

“Absolutely not. Whether or not there was this phone call, I couldn’t remember; and I would never ever talk to him about the price at all. And I have no idea what this ARMS are about.”

¹²¹ Core Bundle 3, page 21.

¹²² Transcript; 11 December 2024, pages 38-39.

¹²³ Transcript; 11 December 2024, pages 41-42.

¹²⁴ Transcript; 10 January 2025, page 18.

166. In answer to the question, if Mr. Brian Liu had that phone conversation with her, would she have told Mr. Dai, Mdm. Cynthia Chen said:¹²⁵

“Well, I would definitely not have told Mr Dai about this telephone conversation. And given the fact that the Island Shangri-La meeting ended unhappily, I would therefore definitely not have talked to Mr Dai about that because that would make Mr Dai unhappy.”

167. It is to be noted that, although Mr. Brian Liu was referred specifically in cross-examination to the email sent at 2:42 pm on 22 August 2016 to Mr. Kin Chan and he had confirmed that he had spoken to Mdm. Cynthia Chen and told her that ASM was prepared to “talk about” HK\$2.5, it was never suggested to him that the statements attributed to her in the email report to Mr. Kin Chan had not been given.¹²⁶

23 August 2016

168. In an email to Mr. Brian Liu, sent at 8:45 am on 23 August 2016, Mr. Kin Chan wrote,

“Check with Cindy ASAP to find out the outcome of her discussion with Dai
Push to set up a meeting on Sept 10 Sat evening or Sept 11 Sunday”.¹²⁷

169. Acting on those instructions, at 11:44 on 23 August 2016 Mr. Brian Liu sent a WhatsApp message to Mdm. Cynthia Chen enquiring if Mr. Dai had “any idea on our *proposal*?”¹²⁸ Mdm. Cynthia Chen responded at 14:39, suggesting that Mr. Brian Liu called her after 5 pm, to which suggestion he responded at 14:41, “Ok”.¹²⁹

170. In an email to Mr. Kin Chan, sent at 12:12 on 23 August 2016, Mr. Brian Liu informed him that Dan Form had a board meeting that day and that he would call Mdm. Cynthia Chen later.¹³⁰ The meeting had been fixed for 3:30 pm. In an email to Mr. Kin Chan, sent at 5:46 pm on 23 August 2016, Mr. Brian Liu advised him:¹³¹

“I spoke to Cynthia.

¹²⁵ Transcript; 10 January 2025, pages 18-19.

¹²⁶ Transcript; 11 December 2024, page 88.

¹²⁷ Core Bundle 3, page 32.

¹²⁸ Core Bundle 1, page 207.

¹²⁹ Core Bundle 1, page 207.

¹³⁰ Core Bundle 3, page 33.

¹³¹ Core Bundle 3, page 35.

She spoke to Dai about our proposal (including the price of \$2.5). She said that Dai didn't say anything. She said she doesn't know if Dai has the intention to sell."

171. In cross-examination, Mr. Brian Liu said that he had spoken to Mdm. Cynthia Chen and that he had done so after 5 pm. She had made the statements that he attributed to her in his email to Mr. Kin Chan at 5:46 pm.¹³²

172. In her oral evidence-in-chief, Mdm. Cynthia Chen said of Mr. Brian Liu's report of their conversation to Mr. Kin Chan:¹³³

"If there was indeed such a phone call, as I would not have said anything to Mr Dai, and therefore all I could tell him would be that I had no idea as to whether or not Mr Dai would be willing to... would have the intention to sell."

ASM - very keen to discuss buying Dai's shares

173. In an email by Mr. Kin Chan, sent at 6:51 pm on 23 August 2016, Mdm. Cynthia Chen was informed:¹³⁴

"We are very keen to discuss the possibility of buying Mr. Dai's shares in Dan Form.

Please rest assured that we have the financial resources to do the deal. We are not a trading fund. We are a private equity fund. Some of the deals we have done in the past:

US\$200 mm unsolicited bid for ARMS (London-listed)

US\$1 billion unsolicited bid for OUE (Singapore-listed)

US\$150mm unsolicited bid for TIH (Singapore-listed)

The above are some of the deals we have done in the past and their approximate sizes. I hope this gives you a sense of what we can do.

Brian said Dai is undecided after the board meeting. I am keen to see him ANY time on Sat September 10th or Sun September 11th. I am sorry that I couldn't meet earlier as I am travelling the next few weeks. I am leaving again for two weeks on September 12th."

174. In his oral evidence, Mr. Kin Chan said that he was still trying to convince Mr. Dai that ASM had the financial capability to get the deal done.¹³⁵

¹³² Transcript; 12 December 2024, pages 8-9.

¹³³ Transcript; 10 January 2025, page 27.

¹³⁴ Core Bundle 3, page 40.

¹³⁵ Transcript; 4 December 2024, page 128.

175. In her oral evidence-in-chief, Mdm. Cynthia Chen said that, on receipt of the email, she had informed Mr. Dai by printing it out and passing it to his secretary.¹³⁶ In cross-examination, she explained that was the general practice if Mr. Dai was not copied on the email. She had read the email before doing so.¹³⁷ When asked if there was no email from Mr. Brian Liu about the proposal whether she would have told Mr. Dai about it, she said “As I said just now, no, definitely not.”¹³⁸

24 August 2016

176. In an email sent to Mr. Kin Chan, copied to Mr. Brian Liu, at 9:54 am on 24 August 2016, Mdm. Cynthia Chen wrote:

“Thank you for your information. I will try my best to arrange a meeting for you and Mr. Dai.”¹³⁹

177. In her oral evidence, Mdm. Cynthia Chen acknowledged that she had received no instructions from Mr. Dai at the time that she sent the email, which she had sent simply out of a sense of politeness.¹⁴⁰

ASM - willing to pay more than HK\$2.5/share

178. In an email to Mdm. Cynthia Chen, copied to Mr. Brian Liu, sent at 10:33 on 24 August 2016, Mr. Kin Chan wrote:¹⁴¹

“Shall we do DD while we wait for my meeting with Mr. Dai?

I am willing to pay more than \$2.5/share. We have lots of [sincerity]. Our intention is very clear. We are keen to do a friendly deal if possible.”

179. In his oral evidence, Mr. Kin Chan explained that although the recipient of the email was Mdm. Cynthia Chen, that was done, “...with the view that this is going to be communicated to Mr Dai... obviously she’s not who the intended recipient was.”¹⁴² Of the indicated price of “more than \$2.5/share” he said, “we actually thought the company was worth \$3 per share. So all along, we are trying to get it as cheap as possible...at that point, we are

¹³⁶ Transcript; 10 January 2025, page 29.

¹³⁷ Transcript; 13 January 2025, pages 51-52.

¹³⁸ Transcript; 10 January 2025, pages 26-27.

¹³⁹ Core Bundle 1, page 99B.

¹⁴⁰ Transcript; 13 January 2025, pages 53-54.

¹⁴¹ Core Bundle 1, page 100.

¹⁴² Transcript; 4 December 2024, pages 144-145.

willing to move up to \$2.50”.¹⁴³

180. Also, he said that on 24 August 2016 he had spoken to Mr. Lee Seng Hui and discussed the progress of the plan to acquire Mr. Dai’s stake. It was intended that it be a joint investment that he was going to lead.¹⁴⁴ Mr. Lee Seng Hui confirmed that the conversation had taken place with Mr. Kin Chan on the telephone.¹⁴⁵

181. In cross-examination, Mdm. Cynthia Chen said of the email, “Frankly speaking Shangri-La meeting is embarrassing and I don’t care about the content of this email, but I just pointed it out to Mr Dai.”¹⁴⁶ She added, “...in my impression I received it but I did not read it because I was upset to arrange a meeting for them.”¹⁴⁷ She said that, “I did not read the email, but printed it out directly and ... gave it to the secretary of Mr Dai right away.”¹⁴⁸ She explained that she had read from the email that Mr. Dai was not copied in the email. After the Shangri-La meeting, Mr. Dai had told her not to care about that.¹⁴⁹

25 August 2016

Mr. Dai’s reply: price is as offered at the Shangri-La meeting

182. In an email, sent at 3:29 pm on 25 August 2016 to Mr. Kin Chan, copied to Mr. Brian Liu, Mdm. Cynthia Chen wrote:¹⁵⁰

“Mr DAI’s reply is passed on here as follows -

- [1. The price that Mr DAI offered at the meeting in Shangri-La is the basis;
2. Performance of 2015 and that of 2016 H1 will be referred to for comparison, and relevant adjustment on prices can be made;
3. Whenever is convenient for you, welcome to negotiate with Mr DAI;
4. This letter does not constitute any legal commitments and responsibilities.]

Relayed by CHAN Siying on behalf (of Mr DAI) Thank you”

183. Mr. Dai had called her into his office and dictated the message she sent. He was “...very

¹⁴³ Transcript; 4 December 2024, pages 145-146.

¹⁴⁴ Transcript; 4 December 2024, page 142.

¹⁴⁵ Core Bundle 2; page 86, paragraph 4(d). Transcript; 12 December 2024, page 89.

¹⁴⁶ Transcript; 13 January 2025, page 55.

¹⁴⁷ Transcript; 13 January 2025, page 56.

¹⁴⁸ Transcript; 13 January 2025, page 58.

¹⁴⁹ Transcript; 13 January 2025, page 59.

¹⁵⁰ Core Bundle 1, page 123.

particular about the words that he used.” That is why she had used the bracket symbols, namely [], to denote a direct quote. Of the price offered by Mr. Dai at the Shangri-La hotel meeting, in her oral evidence-in-chief Mdm. Cynthia Chen said, “In fact, I have no impression about ASM’s price being discussed at the Island Shangri-La meeting.” She added, “I couldn’t remember what that price was or whether or not it was said.”¹⁵¹

184. Of the discussions about the price of Dan Form shares at the Shangri-La meeting, in cross-examination Mdm. Cynthia Chen said:¹⁵²

“I cannot recall if they discussed about that and the details are what the two gentlemen could communicate with each other and I did not sit down for the whole course. I would ask people to refuel water and pay the bill and my role, I could pay attention to maintain the relationship of minor shareholder to have harmonious atmosphere.”

185. Of Mr. Dai’s evidence that, at the meeting at the Shangri-La hotel, he had suggested a price of HK\$3 per share, in cross-examination, Mdm. Cynthia Chen said, “That’s beyond my scope of work and I had no impression that I talked to them about that.”¹⁵³

186. Of his assessment of Mr. Dai’s email reply, in his oral evidence Mr. Kin Chan said:¹⁵⁴

“That is good news, the deal is moving closer. It’s very positive from the deal perspective.”

Of the invitation to negotiate whenever it was convenient for Mr. Kin Chan, he said:¹⁵⁵

“Of course it’s like we want \$3, but we are willing to negotiate. That’s how I would look at it. I don’t remember for sure, but I can imagine me and Brian high-fiving each other.”

ASM - keen at a price between HK\$2.5 and HK\$3 per share

187. In an email to Mdm. Cynthia Chen, copied to Mr. Brian Liu, sent at 5:06 pm on 25 August 2016, Mr. Kin Chan wrote:¹⁵⁶

“Totally agreed!

¹⁵¹ Transcript; 10 January 2025, pages 34-35.

¹⁵² Transcript; 13 January 2025, page 62.

¹⁵³ Transcript; 13 January 2025, page 63.

¹⁵⁴ Transcript; 4 December 2024, pages 147-148.

¹⁵⁵ Transcript; 4 December 2024, page 148.

¹⁵⁶ Core Bundle 1, pages 99A and 122.

Brian, please confirm a meeting with Mr. Dai ASAP.

My points are very simple:

γ/ We are keen at a price between \$2.5 and \$3 per share

γ/ We will launch a GO once the price is agreed and Mr. Dai is willing to give us the irrevocable undertaking to sell us his stake once the GO goes unconditional”.

188. In his evidence in cross-examination, Mr. Brian Liu said that the reference to a price of “between \$2.5 and \$3 per share” was a decision made by Mr. Kin Chan. He agreed that this was the process of bargaining the price.¹⁵⁷ The closing price of Dan Form shares on 25 August 2016 was HK\$1.77 per share.¹⁵⁸

189. In her evidence-in-chief, Mdm. Cynthia Chen said that she had informed Mr. Dai by printing out the email and giving it to his secretary¹⁵⁹.

190. In his evidence, Mr. Lee Seng Hui said that he had another conversation with Mr. Kin Chan about the progress of the proposed deal on 25 August 2016. Mr. Kin Chan informed him that he would indicate to Dan Form that ASM had room for further discussion regarding pricing.”¹⁶⁰

Steps taken to arrange a meeting between Mr. Kin Chan and Mr. Dai

26 August 2016

191. In an email to Mr. Kin Chan, sent at 12:18 on 26 August 2016, Mr. Brian Liu advised him:¹⁶¹

“Kin,

I spoke to Cynthia again. She said she’s still trying to set up meeting with Dai.

Told her that we’re keen to do a friendly deal, and that we don’t want to go unsolicited.”

In response, Mr. Kin Chan replied, in an email at 2:53 pm on 26 August 2016, “Keep pushing hard”.

¹⁵⁷ Transcript; 9 December 2024, page 41.

¹⁵⁸ Core Bundle 1, page 5.

¹⁵⁹ Transcript; 10 January 2025, pages 41-43.

¹⁶⁰ Transcript; 12 December 2024, page 89.

¹⁶¹ Core Bundle 1, page 99.

Arrangements for a Conference call

192. In an email to Mr. Kin Chan, copied to Mr. Brian Liu, sent at 2:07 pm on 26 August 2016, with the Subject: ‘Dan Form: Cynthia just called’, Ms. Michelle Wong, Mr. Kin Chan’s secretary, advised them that Mdm. Cynthia Chen had said that Mr. Dai could meet up no later than the end of next Friday. Clearly that was a reference to Friday, 2 September 2016. She suggested:¹⁶²

“Perhaps Brian to see Mr. Dai next week then patch Kin in.”

27-29 August 2016

193. In a WhatsApp message to Mdm. Cynthia Chen, sent at 18:53-18:55 on 27 August 2016, Mr. Brian Liu referred to her earlier message and asked:¹⁶³

“is it ok if I meet chairman Dai on Wednesday, and then we have a conference call together?”

He went on to assure her:

“...again, we are serious about the deal and have lined up funding
we hope to do it in a friendly approach, as opposed to our past deals
we have not sold a single share over the past year or so”.

194. In a WhatsApp message in reply, sent at 20:56 on 27 August 2016, Mdm. Cynthia Chen’s message included:¹⁶⁴

“Hi Brian, I will let Chairman Dai know your intention about the deal on Monday.”

Proposed conference call - Wednesday, 31 August 2016

195. In a WhatsApp message to Mr. Brian Liu, sent at 20:18 on 28 August 2016, Mdm. Cynthia Chen wrote:¹⁶⁵

“Hi Brian, Mr. Dai would like to have a meeting with you, and a conference call with Kin together. The meeting Will be held at 10am on coming Wednesday in our office.
Thx.”

¹⁶² Core Bundle 3, page 50.

¹⁶³ Core Bundle 1, page 187.

¹⁶⁴ Core Bundle 1, page 188.

¹⁶⁵ Core Bundle 1, page 188.

196. Having responded to Mdm. Cynthia Chen's message in WhatsApp messages later on the evening of 28 August 2016, saying that he wished to confirm the arrangement with Mr. Kin Chan, in WhatsApp messages to her at 12:52-12:54 on 29 August 2016, Mr. Brian Liu wrote, "Hi Cynthia, Is Wednesday 11am okay for chairman?" He explained that Mr. Kin Chan would be travelling on a train at 10 am, but added, "However, if chairman is not available at 11am, then kin can still call on the train at 10am."¹⁶⁶

197. Having replied in a WhatsApp message sent at 12:58 on 29 August 2016, that she would confirm with Mr. Dai, Mdm. Cynthia Chen added, "...hope this will be ok 🙏", in a WhatsApp message, sent to Mr. Brian Liu at 18:51 on 29 August 2016, Mdm. Cynthia Chen confirmed that, "...the meeting time can be changed to 11am on Wednesday. 🙏" Mr. Brian Liu confirmed that he would come to Dan Form's office, "...then we can call kin together".¹⁶⁷

Wednesday, 31 August 2016 - meeting

198. In a WhatsApp message to Mdm. Cynthia Chen, sent at 09:53 on 31 August 2016, Mr. Brian Liu confirmed that he would come to Dan Form's office, "at 11am (one hour from now)". For her part, in response to his enquiry, in a message in reply sent at 10:10, Mdm. Cynthia Chen confirmed that she had prepared a telephone to make a call to a "USA number".¹⁶⁸

199. In his oral evidence, having been taken to the WhatsApp messages and having acknowledged that the email indicated that he was on his way to the meeting, Mr. Brian Liu said, "... it looks like I did go to Mr. Dai's office".¹⁶⁹ Earlier, he said, "I don't remember the date. But I did go to the office. I seem to remember that a conference call with Kin who was not in Hong Kong, took place, at Mr Dai's office."¹⁷⁰ Nevertheless, Mr. Brian Liu said that he could not remember whether the meeting actually took place, let alone what was discussed.

200. Mr. Kin Chan said that he had participated from Boston in a telephone conference call with Mr. Dai, Mr. Brian Liu and Mdm. Cynthia Chen. He remembered it very well. It was in the middle of the night in Boston. He knew Mdm. Cynthia Chen was present because she made comments and interpreted as in other face-to-face meetings.¹⁷¹ In his witness statement, he said

¹⁶⁶ Core Bundle 1, page 189.

¹⁶⁷ Core Bundle 1, pages 189-190.

¹⁶⁸ Core Bundle 1, pages 190-191.

¹⁶⁹ Transcript; 6 December 2024, page 71.

¹⁷⁰ Transcript; 6 December 2024, page 68.

¹⁷¹ Transcript; 4 December 2024, pages 162-165.

that the conference call had taken place on 2 September 2016.

201. For her part, Mdm. Cynthia Chen agreed in her evidence-in-chief that on Wednesday, 31 August, 2016, a conference took place, at which she was present, between Mr. Dai, Mr. Brian Liu and Mr. Kin Chan. There were two parts to the meeting: ¹⁷²

- (i) a long-distance call with Mr. Kin Chan, in which he did not say very much;
- (ii) then, "...it was Brian Liu who behaved very aggressively, so he was doing the talk most of the time." He said that although Mr. Dai was a majority shareholder, his shareholding was only slightly above 36.5%. Further, he had been involved in hostile acquisitions before and he referred to the acquisition of an old bus company.

In response, Mr. Dai said, "If you had enough money, then that would have been placed on the table." The meeting ended on that note. Mr. Dai was very angry. ¹⁷³

Meeting ended unhappily

202. In cross-examination, Mdm. Cynthia Chen said that she had no impression of any discussion of the price of acquisition. She felt that it was not discussed during the meeting. Mr. Brian Liu had "showed off" about his Hong Kong successes, in particular the acquisition of "a Hong Kong Chinese family's tram company." Mr. Dai was very angry and stood up and the meeting ended very rapidly. ¹⁷⁴

Friday, 2 September 2016 meeting

Arrangements:

(i) 31 August 2016

203. Mdm. Cynthia Chen said that an hour or so after the meeting had finished on 31 August 2016, having called her into his office, Mr. Dai instructed her, "Two days later you ask the two young guys to come back again." namely, on Friday, 2 September 2016. She immediately called Mr. Brian Liu. In response, Mr. Brian Liu said that he might not be available on Friday and suggested that he come back later that same day. However, Mr. Dai declined that request and instructed her to inform him that this was an urgent meeting and that if they didn't attend

¹⁷² Transcript; 10 January 2025, pages 51-53.

¹⁷³ Transcript; 10 January 2025, pages 49-53.

¹⁷⁴ Transcript; 13 January 2025, pages 73-79.

on Friday he would not have any other time to deal with them.¹⁷⁵

204. In WhatsApp messages, and sent to Mdm. Cynthia Chen at 22:02-22:05 on 31 August 2016, Mr. Brian Liu wrote:¹⁷⁶

“Let me know the plan tomorrow

If chairman wants to meet, I can change my flight and landed in Hong Kong Friday 4pm the soonest

Ok as spoken

I will change my flight and be in Hong Kong on Friday morning”

Mdm. Cynthia Chen responded at 22:09, “OK, thx”.

205. In an email to Mr. Kin Chan, sent at 11:28 on 31 August 2016, under the Subject heading, ‘Dan Form / Meet Dai’, Mr. Brian Liu wrote:¹⁷⁷

“Kin

Cynthia called.

She said Dai wants to meet me on Friday morning HKT (time is TBD). Don’t know what Dai wants to talk about, though Cynthia said it’s quite urgent. I can change my flight and meet him. Let me know if you want to dial in?

She said Dai met with another potential buyer today.”

(ii) 1 September 2016

206. In WhatsApp messages to Mdm. Cynthia Chen, sent at 10:52-10:54 on 1 September 2016, Mr. Brian Liu wrote:¹⁷⁸

“Hi Cynthia

I changed my flight

Unfortunately the only flight available is at 5 am, which means I will land in Hong Kong at 11am on Friday

I will come to your office directly from airport once I land

¹⁷⁵ Transcript; 10 January 2025, pages 53-54.

¹⁷⁶ Core Bundle 1, page 191.

¹⁷⁷ Core Bundle 1, page 184.1.

¹⁷⁸ Core Bundle 1, pages 191-192.

I expect to arrive at your office at 1230”

207. In a reply by WhatsApp, to Mr. Brian Liu, sent at 10:56, Mdm. Cynthia Chen wrote, “No worries, I will convey your and kin’s sincerity to DAI Zong. Come on. [Add oil.]” Mr. Brian Liu responded, “Thanks!”¹⁷⁹

(iii) 2 September 2016

208. In WhatsApp messages sent to Mdm. Cynthia Chen at 05:18 on 2 September 2016, Mr. Brian Liu wrote:¹⁸⁰

“I am about to take off from Jakarta

Should be no delay and land at 11:10 amHKT.”

209. For her part, Mdm. Cynthia Chen responded:

“Mr. Dai says that we can change the meeting to 1pm or 2pm 🕒”.

210. In messages sent to Mdm. Cynthia Chen at 11:08, Mr. Brian Liu advised her that he had landed and would come to her office at 1 pm.¹⁸¹

ASM’s Proposal - HK\$2.75 per ordinary share

211. Then, in a WhatsApp message to Mdm. Cynthia Chen, sent at 12:48, Mr. Brian Liu wrote:¹⁸²

“I have just emailed you our proposal

It was finalized just now and I don’t have enough time (sic) to print it

Do you mind printing a few copies when we meet?”

At 12:57 Mdm. Cynthia Chen responded, “Done”.

Proposal Letter

212. In an email to Mr. Dai and Mdm. Cynthia Chen, sent at 12:47 on 2 September 2016, under the Subject: ‘Proposal Letter’, Mr. Brian Liu wrote:¹⁸³

¹⁷⁹ Core Bundle 1, page 214.

¹⁸⁰ Core Bundle 1, page 192.

¹⁸¹ Core Bundle 1, page 193.

¹⁸² Core Bundle 1, page 193.

¹⁸³ Core Bundle 1, pages 125-129 and 140-143.

“Hi Mr DAI and Cynthia,

Attached is our proposal letter. Thank you!”

213. Mr. Kin Chan said that he had instructed Mr. Brian Liu to send the proposal letter to Mr. Dai and Mdm. Cynthia Chen.¹⁸⁴ The closing price of Dan Form shares on 1 September 2016 was HK\$1.74.¹⁸⁵

214. The Proposal Letter, which was written in Chinese characters, described the major shareholder as holding the beneficial ownership of 36.5% of the target company’s total number of outstanding ordinary shares. <Code> was defined as the <Company Acquisition, Merger and Stock Repurchase Code> [Takeovers Code].

215. Under the heading, ‘Tender offer’, it was stated:

- | | |
|-----------------------------|---|
| Voluntary offer of takeover | • The buyer has an intention to propose to all ordinary shareholders of the target company a comprehensive voluntary offer for takeover under the <Code>, only subject to the conditions precedent and the offer conditions as mentioned below |
| Acquisition price | • HK\$2.75 per ordinary share, and only the buyer is entitled to adjust the acquisition price based on the due diligence results |
| Preconditions | • Only when the following preconditions are satisfied before the buyer proposes a voluntary offer for takeover, will the buyer propose the voluntary offer for takeover: <ul style="list-style-type: none">○ The buyer is satisfied with the due diligence results;○ Major shareholders sign the <Irrevocable Undertaking to Accept Offer> |

2 September 2016 meeting

216. In her oral evidence, Mdm. Cynthia Chen said that, as Mr. Brian Liu had requested, she had printed out the Proposal Letter in advance of the meeting, which was held in the conference

¹⁸⁴ Core Bundle 2; page 66, paragraph 27.

¹⁸⁵ Core Bundle 1, page 5.

room at Dan Form's offices. Of the meeting, she said:¹⁸⁶

“...as soon as I sat down, Dai said that, well, he hadn't really read the papers; and therefore he asked that Mr Fung, the CFO, be asked to join, and therefore I went out to go to Mr Fung.”

Meeting ended unhappily

217. She said that she had been unable to locate Mr. Fung, but when she returned to the conference room “...the meeting was already over.” Mr. Dai was standing up. He addressed Mr. Brian Liu, “Why are you behaving in this manner? Are you representing your company or what?” She felt that he was sending him away. She recalled Mr. Dai saying, “All right, that's nice. So at long last, I'm going to have some tranquillity.”¹⁸⁷ For her part, she said:¹⁸⁸ “I also felt a sigh of relief because I would no longer be required to deal with this very difficult minority shareholder.” So, the meeting had ended unhappily.¹⁸⁹

Mr. Dai's criticism of Mdm. Cynthia Chen

218. Mdm. Cynthia Chen said that after the conclusion of the meeting of 2 September 2016, Mr. Dai had, “said something to me rather bluntly.” He said, “...that in dealing with relations with minority shareholders, my emphasis was put in the wrong place; and he gave me a remark with a 4-letter Chinese saying ... ‘while being very respectful to them, you should try to stay away from them’.”¹⁹⁰

219. In cross-examination, Mdm. Cynthia Chen said that after Mr. Dai's criticism of her, she stopped reading Mr. Brian Liu's WhatsApp messages.¹⁹¹ She added, “since then I didn't really like reading his messages. But when it comes to arrange meetings, I do read those messages.”¹⁹² It is difficult to understand that, if Mdm. Cynthia Chen did not read the message in the first place, how she knew whether a particular message related to the arranging of meetings.

Failure to cross-examine

220. It is to be noted that it was not suggested in any manner whatsoever to Mr. Dai in cross-examination that this meeting had ended unhappily, that he had upbraided Mr. Brian Liu for

¹⁸⁶ Transcript; 10 January 2025, pages 58-59.

¹⁸⁷ Transcript; 10 January 2025, pages 59-60.

¹⁸⁸ Transcript; 10 January 2025, pages 59-60.

¹⁸⁹ Transcript; 13 January 2025, page 108.

¹⁹⁰ Transcript; 10 January 2025, pages 46-47.

¹⁹¹ Transcript; 14 January 2025, page 35.

¹⁹² Transcript; 14 January 2025, page 38.

his behaviour nor that at the conclusion of the earlier meeting on 31 August 2016, Mr. Dai had become very angry in the face of Mr. Brian Liu's behaviour. Similarly, it was not suggested in cross-examination of Mr. Brian Liu by Ms. Tse that he had behaved in the manner alleged by Mdm. Cynthia Chen and that the meeting had ended unhappily.

221. In cross-examination, Mdm. Cynthia Chen said that, although she had printed out the Proposal Letter sent to Mr. Dai and her by Mr. Brian Liu that:¹⁹³

“I didn't read it. Because ... I didn't have even lunch time.”

She did not know whether Mr. Dai and Mr. Brian Liu had any discussions about the Proposal Letter in the meeting.

222. After the meeting with Mr. Dai and Mdm. Cynthia Chen at Dan Form's offices in the afternoon of 2 September 2016, Mr. Brian Liu sent WhatsApp messages to Mdm. Cynthia Chen at 18:42-18:43 on 2 September 2016 seeking clarification of a term that had been discussed:¹⁹⁴

“Today, DAI Zong said that he would give us 2 weeks to consider, and during these two weeks, he will not sell to anyone else.

I would like to confirm again that the two-week deadline starts from today. Is this correct?”

He received no WhatsApp message in reply, but at 19:50 he sent a message to Mdm. Cynthia Chen, stating “understood, thanks.”

223. In his oral evidence, Mr. Brian Liu said that it looked like he had received a reply from Mdm. Cynthia Chen, not through a WhatsApp message but, “Perhaps a phone call from Cynthia.”¹⁹⁵

224. In cross-examination, Mdm. Cynthia Chen said that she could not recall having had any telephone conversation with Mr. Brian Liu about this issue. For her part, she said, “First of all, I have no idea about the two weeks request. You showed me the message stating the two weeks, I still don't understand.”¹⁹⁶

¹⁹³ Transcript; 13 January 2025, pages 100-101.

¹⁹⁴ Core Bundle 1, page 218.

¹⁹⁵ Transcript; 6 December 2024, page 84.

¹⁹⁶ Transcript; 13 January 2025, page 106.

3 September 2016

225. In an email to Mr. Brian Liu, sent at 7:48 am on 3 September 2016, Mr. Kin Chan posed a question in the Subject heading:¹⁹⁷

‘how was your meeting with Dai on Friday?’

226. It is readily apparent from that email and the subsequent exchange of emails between Mr. Kin Chan and Mr. Brian Liu on 3 September 2016, that Mr. Kin Chan had not participated in the meeting held among Mr. Brian Liu, Mr. Dai and Mdm. Cynthia Chen on Friday, 2 September 2016. His assertion to the contrary in his supplemental witness statement was clearly an incorrect memory.

Response from Mr. Dai in the discussion of the Proposal at 2 September 2016 meeting

227. Mr. Brian Liu reported the progress of the meeting of 2 September 2016 to Mr. Kin Chan and others at ASM in an email under the ‘Subject’ heading: ‘Dan Form / response from Dai’, sent at 10:39 on 3 September 2016:¹⁹⁸

“Kin, I met Dai and Cynthia to go through our proposal.

Here are responses from Dai:

Pricing: we proposed that our price is a non-binding \$2.75/shr subject to due diligence, and it is entirely up to us to decide if we are satisfied with outcome of DD.

Dai insists that we make a binding offer of \$2.75/shr, subject to an adjustment mechanism of assets and liabilities, based on financials as at 30 June 2016....

Exclusivity and price-matching: once we make a binding offer (at the price described above), Dai will agree not to sell to anybody else for 14 days while we do DD. After this 14-day period, if someone else offers a higher price, Dai will give us one opportunity to match the higher price...

Due diligence: Dai doesn’t mind giving us more time for DD (we asked for 3 weeks). However, as mentioned above, we need to make a binding offer (at \$2.75 with adjustment mechanism) before starting DD.

Any thoughts how to respond?”

¹⁹⁷ Core Bundle 3, page 52.

¹⁹⁸ Core Bundle 3, page 53.

5 September 2016 - Tian An to proceed on a stand-alone basis

228. Mr. Lee Seng Hui said that in a telephone call to Mr. Kin Chan on 5 September 2016, he had informed him that, through Tian An, he did not want to join a consortium investing in Dan Form, but was interested in doing so on a “stand-alone” basis. He said that Mr. Kin Chan indicated that he would not object.¹⁹⁹

Steps taken by Tian An

229. Then, Mr. Lee Seng Hui informed Mr. Warren Lee of his decision to acquire Mr. Dai’s shares in Dan Form on that basis, instructing him, “...to discuss possible offer terms with ASM who would still continue acting as a middleman between Dai and Tian An.” Further, he asked Mr. Warren Lee to instruct P.C. Woo & Co., Tian An’s lawyers, to start drafting an SPA.²⁰⁰

230. Mr. Kin Chan confirmed that Mr. Lee Seng Hui had informed him by telephone on or around 5 September 2016 that he did not wish to be part of a consortium, but rather he wished to take over Dan Form by himself. Mr. Kin Chan said that, although he was disappointed, he indicated that he did not object, rather he said he would facilitate Mr. Lee Seng Hui’s efforts, given that ASM stood to benefit as the owner of 3.5% of Dan Form shares.²⁰¹ Mr. Brian Liu confirmed that on or around that date Mr. Kin Chan had passed that information to him.²⁰²

6 September 2016

231. In an email sent to Mr. Kin Chan at 12:06 pm on 6 September 2016, under the Subject heading: ‘Tianmimi / spoke to Warren’, Mr. Brian Liu wrote that he had spoken to Mr. Warren Lee who had told him that his lawyers were working on an SPA with Dai, the proposed terms of which included:²⁰³

“SPA:...

- * Fixed 2.75 per share, with no adjustment mechanism
- * The transaction is conditional on no material adverse change post June-2016 financials
- * “Material adverse change” is defined as HK\$ 30m of undisclosed or additional

¹⁹⁹ Core Bundle 2; pages 86 to 87, paragraph 4(f).

²⁰⁰ Core Bundle 2; page 86, paragraph 4(g).

²⁰¹ Core Bundle 2; page 67, paragraph 28.

²⁰² Transcript; 6 December 2024, pages 84-85.

²⁰³ Core Bundle 3, page 55.

liabilities...

- * Offeror will be allowed to do DD for [4] weeks
- * Offeror is willing to pay a deposit of HK\$ 100 mm in an account...

...

Meeting Dai: Warren said Seng Hui will ask you to set up a meeting with Dai”.

New Proposal

232. In a WhatsApp message, sent on Mr. Kin Chan’s instructions to Mdm. Cynthia Chen at 12:58 on 6 September 2016, Mr. Brian Liu wrote:²⁰⁴

“we have a new proposal
can we speak?”

Mdm. Cynthia Chen replied at 14:01:

“Sorry for late response
How about now?”

233. Then, in WhatsApp messages to Mdm. Cynthia Chen, sent on and between 14:24 and 14:27, Mr. Brian Liu wrote:²⁰⁵

“Just to summarize:
We will sign binding SPA at fixed \$2.7, without adjustment mechanism
the only pre-condition is that the company has no more than HK\$ 30
million of undisclosed/new liabilities, based on June 2016 financial statement
we’re also willing to put up some deposit in escrow, to show that we serious
our lawyers have started drafting the SPA in parallel
the above is, of course, binding only upon signing the SPA”

In a reply to Mr. Brian Liu, sent at 14:31, Mdm. Cynthia Chen wrote, “got it 🍷”.

²⁰⁴ Core Bundle 1, page 217.

²⁰⁵ Core Bundle 1, pages 218-219.

Unread WhatsApp messages

234. In her oral evidence-in-chief, Mdm. Cynthia Chen confirmed her earlier evidence in respect of WhatsApp messages, specifically in respect of this series of WhatsApp messages, that she did not tell Mr. Dai about their contents.²⁰⁶ In cross-examination, when it was suggested that she must have read those messages, she replied: “Incorrect”. She added:²⁰⁷

“Basically, I ignore the WhatsApp he sends me. I just have to give him a response. I also remember that I at the time was on the job, I remember that I was busy with the interim report booklet... And also he mentioned above a proposal, that if he has a proposal, he should send an email about it, right? It’s not as if he’s never done so before, and one of the reasons that I ignored him would be this one.”

Requests of Mr. Brian Liu: send emails, not WhatsApp messages

235. In response to the question from the Chairman as to why, in those circumstances, Mdm. Cynthia Chen did not tell Mr. Brian Liu to direct his proposal to Mr. Dai, she said:²⁰⁸

“Actually, I told him more than once to stop, to stop sending me those loose and fragmented WhatsApp messages, to send me an email, but for this proposal in WhatsApp he still does that. The only official document that I have received from him was the NDA, but he still kept on sending these fragmented WhatsApp messages to me, despite me telling him more than once not to do that, I don’t know why he does that. I think that he’s a little bit strange.”

236. In subsequent cross-examination, Mdm. Cynthia Chen was invited to point to:²⁰⁹

“... by which message, WhatsApp message, that you have told Mr Liu to send you an email, “Please don’t send me WhatsApp messages”?

Mdm. Cynthia Chen responded:

“Because his boss whose name is Kin has also sent emails both to Mr Dai and myself and Brian himself has also sent emails before. Brian speaks very, very quickly. He says a lot of different things and always respond going, “Okay. Okay. Great. I’ll try my best”.

²⁰⁶ Transcript; 10 January 2025, pages 67-68.

²⁰⁷ Transcript; 14 January 2025, pages 4- 5.

²⁰⁸ Transcript; 14 January 2025, page 18.

²⁰⁹ Transcript; 14 January 2025, pages 23-24.

I also told him could you write down what you want to say and communicate that way, but he still keeps on doing what he does. And at the time, I wondered is he a person who does not write emails in order to communicate with other people.”

237. Mdm. Cynthia Chen acknowledged that there was not a single WhatsApp message sent on and between 6 August 2016 and at least 6 September 2016 where she had asked Mr. Brian Liu either not to send her WhatsApp messages or, rather to send an email instead. Of that, she said:²¹⁰

“...Because if he doesn’t bother me like the way he did there, I’m polite in my responses. But I can’t stop him when it comes to the choice of a channel for communication. But he knows that I can’t handle all of this unless it’s written down, and he knows about that because not only does he send messages, he also calls me by phone.”

238. In subsequent evidence in cross-examination, Mdm. Cynthia Chen gave a further explanation of why she had not sent a WhatsApp message to Mr. Brian Liu asking him to stop sending proposals in WhatsApp messages, namely that a minority shareholder had the right to choose which channel to communicate with the company.²¹¹ She added:²¹²

“I remember I said so on 2nd September or even before, I told him that he should send us emails if he was wanting to say, and not just limit it to the proposal. Anything that he wishes to tell chairman, he should do so via email or by letter.”

WeChat: Mdm. Cynthia Chen/Mr. Dai

239. In a WeChat message to Mr. Dai, sent at 14:30 on 6 September 2016, Mdm. Cynthia Chen wrote:²¹³

“Mr DAI please contact me at your convenience, it is necessary to report matters regarding CHEN’s funds.”

At 21:48 there was a record: Chat duration 10:45.

240. It is to be noted that in her WeChat message to Mr. Dai, sent at 00:01 on 7 August 2016, Mdm. Cynthia Chen explained, “I have lost the company cellphone at home. So, I’m contacting

²¹⁰ Transcript; 14 January 2025 pages 24-25.

²¹¹ Transcript; 14 January 2025, page 47.

²¹² Transcript; 14 January 2025, page 48.

²¹³ Core Bundle 1, pages 229 and 235.

you with my private cellphone. Sorry 🙏”.²¹⁴ In her first record of interview, Mdm. Cynthia Chen acknowledged that she had been given a company cell phone, but said that it was, “Not in use... (It has not been in use) for a long time ... for a number of years.”²¹⁵

241. In her oral evidence, Mdm. Cynthia Chen explained that:²¹⁶

“I was aware of the fact that Mr Dai doesn’t like this company and he called that company “Chen’s funds” instead of ASM.”

242. Mdm. Cynthia Chen recalled having a telephone conversation with Mr. Dai. She said, “I was seeking help from Mr Dai because I felt that I was on the verge of collapse, under pressure. So for that gentleman, well, he did not send any emails and then I was of the view that he might not like to send in emails.”²¹⁷ She added:²¹⁸

“I told Mr Dai... I asked him if it’s possible for me to give Mr Dai’s phone number to Chen’s funds because he was bombarding me with calls, and therefore I was asking Dai if I could pass his phone number to him.... there were also many WhatsApp messages other than the bombardment of phone calls.”

In the result, she said that, “Mr Dai agreed that I passed the cell phone number to the other party.”²¹⁹

243. In an email to Mr. Kin Chan, sent at 2:51 on 6 September 2016, under the Subject heading: ‘Tianmimi / spoke to Warren, Mr. Brian Liu wrote:²²⁰

“Kin,

I spoke to Cynthia re our new proposal of binding offer of fixed \$2.7, subject to less than HK\$30mm of undisclosed/new liabilities. She said she’ll talk to Dai.”

244. Of the statement attributed to her in the email that “she’ll talk to Dai”, in her oral evidence-in-chief, in answer to a question from the Chairman of whether she had said that to Mr. Brian Liu, Mdm. Cynthia Chen answered in English, “No.” She added, “I would not pass

²¹⁴ Core Bundle 1, page 233.

²¹⁵ Witness Evidence Bundle 1; pages 305-307, counter #s 69-84.

²¹⁶ Transcript; 10 January 2025, page 30.

²¹⁷ Transcript; 10 January 2025, page 77.

²¹⁸ Transcript; 10 January 2025, page 78.

²¹⁹ Transcript; 10 January 2025, page 80.

²²⁰ Core Bundle 3, page 59.

WhatsApp messages to Mr Dai.”²²¹

245. On Mr. Kin Chan’s instructions, Mr. Brian Liu sent other WhatsApp messages to Mdm. Cynthia Chen on and between 18:41-18:58.²²²

“cynthia, i spoke to kin

could you call me back?

my mobile please

i spoke to kin again

We hope to reduce it to 2.7, because DAI Zong requested to sign a *binding* Agreement

Because we have already told the funding consortium that the price is 2.75, but now

DAI Zong has made a new request; if we don’t lower the price a bit, it might be

difficult for kin in front of the consortium

Reducing it by only RMB0.05 is purely to make it easier for kin to negotiate with the consortium and save more face. We hope for your understanding, and it is a gesture of compromise!

If it is absolutely necessary to stick to 2.75, Kin is willing to do it as well, but we hope DAI Zong can reconsider and be more accommodating!

To show his sincerity, Kin has already lowered the price without waiting for the results of due diligence. Additionally, Kin is willing to provide cash as a deposit, and the contract will be binding. Kin simply hopes for a little more face-saving in this matter!

Kin is currently in London, and if necessary, I can visit again.”

[Italics added.]

246. As noted earlier, on 5 September 2016, Mr. Kin Chan had accepted Mr. Lee Seng Hui’s proposal that he proceed on a stand-alone basis to acquire Mr. Dai’s shares. It follows, that thereafter, there was no and there would not be a consortium.

247. At 19:06 Mdm. Cynthia Chen replied, “👍”. In response to his message “Thanks”, she wrote “You’re welcome”.²²³

²²¹ Transcript; 10 January 2025, pages 68-69.

²²² Core Bundle 1, pages 219-223.

²²³ Core Bundle 1, page 223

248. In a further explanation of the new proposal, Mr. Brian Liu sent another WhatsApp message at 19:13, in which he wrote:²²⁴

“We hope Dai Zong understands that our original proposal in the letter of intent was non-binding [we can decide not to buy it after completing the due diligence], but the current contract is binding [we conduct due diligence after signing the contract, and once it is completed, the purchase is guaranteed unless there is a new debt of RMB 30,000, 000], so it is already a significant improvement in the terms.

Please raise your hand high in mercy, DAI Zong”

Mdm. Cynthia Chen replied at 19:18 “I will try my best 😊”.

7 September 2016

249. In WhatsApp messages to Mdm. Cynthia Chen, sent at 9:08 and 9:09 am on 7 September 2016, Mr. Brian Liu wrote:²²⁵

“Morning Cynthia

Have you heard anything from mr. Chairman?”

He received no WhatsApp message in reply.

250. In an email to Mr. Kin Chan, sent at 9:56 am on Wednesday, 7 September 2016, Mr. Brian Liu reported:²²⁶

“I spoke to Cynthia again.

Pricing: Cynthia said Dai didn’t say anything on our new price of \$2.7/shr. And yet, Cynthia said Dai wants us to send him the draft SPA anyways

Condition: Cynthia said Dai doesn’t have any issue on the condition precedent of HK\$30mm undisclosed liabilities

Deposit and break fee: She asked how much cash we will put up as deposit. She also asked if Dai needs to pay an equal amount of break fee (in addition to refunding the deposit) if Dai defaults - she seems to imply that Dai is ok with this idea. I haven’t told

²²⁴ Core Bundle 1, pages 221-223.

²²⁵ Core Bundle 1, pages 222 and 224.

²²⁶ Core Bundle 3, pages 61-62.

her the amounts yet, because Warren has yet to determine the permissible amount of break fee...”

251. In her evidence-in-chief, Mdm. Cynthia Chen said that she could not recall if there was a telephone conversation with Mr. Brian Liu, but she said, “I would never talk to anybody over the phone about price.” By that, she meant the offer price of shares. She denied having told Mr. Brian Liu the statements attributed to her in his email, “How could that be possible? ... No.”²²⁷

252. In two separate emails to Mr. Kin Chan, sent at 10:35 am and 11:34 am on 7 September 2016, Mr. Brian Liu informed him that Mr. Warren Lee said that Mr. Lee Seng Hui wanted Mr. Kin Chan set up a meeting, “with Dai asap.”²²⁸

253. In WhatsApp messages to Mdm. Cynthia Chen, sent on and between 14:32 and 14:47 on 7 September 2016, Mr. Brian Liu wrote:²²⁹

“cynthia, can you call me back?

Regarding the deposit [deposit], we are willing to provide HK\$100 million as the deposit

Also, may I ask if DAI Zong is available on Sunday morning to meet with Mr. CHEN?

The deposit also represents our sincerity, being 8% of the transaction price--

The deposit required to buy a property in Hong Kong is only 5% 😊”

254. At 14:47, Mdm. Cynthia Chen responded, “Got it 😊”. Mr. Brian Liu continued:

“The 100 million deposit was offered by us on our own initiative, and DAI Zong did not request it, which is a gesture of our sincerity!”

In reply, Mdm. Cynthia Chen wrote, “That’s right 👍”

255. In her evidence-in-chief, Mdm. Cynthia Chen said that she did not convey to Mr. Dai the content of Mr. Brian Liu’s WhatsApp messages.²³⁰

256. In an email to Mr. Lee Seng Hui, sent at 2:33 pm on 7 September 2016, Mr. Kin Chan

²²⁷ Transcript; 10 January 2025, pages 83-85.

²²⁸ Core Bundle 3, page 61.

²²⁹ Core Bundle 1, page 225.

²³⁰ Transcript; 10 January 2025, page 82.

said that he was trying to set up a meeting with Mr. Dai on Sunday and informed him:²³¹

“Call me any time.

Trying to set up mtg with Dai on Sunday.

Dai already agrees to \$30mm adjustment. He’s thinking of \$2.7/share (vs \$2.75/share).

Documentation is being progressed. He’s expecting draft S&P to come soon.”

257. In his supplemental witness statement, Mr. Lee Seng Hui said that, in a telephone conversation at 3:00 pm on 7 September 2016, Mr. Kin Chan told him that, “Dai might accept an offer price between HK\$2.7 and HK\$2.75.” For his part, he asked Mr. Kin Chan to set up a meeting with Dai to discuss a possible deal.²³²

258. In WhatsApp messages to Mdm. Cynthia Chen, sent on and between 16:03-16:21 on 7 September 2016, Mr. Brian Liu informed her that Mr. Kin Chan would call Mr. Dai on the Chairman’s mobile phone at “22:00 tonight”, and to confirm that the number was + 852 6888 2929.²³³ In response to his request that she inform Mr. Dai, Mdm. Cynthia Chen replied, “Sure. 🍷”.

259. In an email to Mr. Lee Seng Hui, copied to Mr. Brian Liu and Mr. Warren Lee, sent at 11:51 pm on 7 September 2016 Mr. Kin Chan wrote:²³⁴

“I spoke to Dai.

He wants HK\$2.75/share and I told him yes.

He wants deposit of only HK\$30mm and break fee of HK\$60mm. I told him NO but let’s talk on Sunday.

He is in Beijing now. He said he can meet us on Sunday at 2:30 at Yin Tai Centre ... followed by dinner.

I think we have a deal!”

8 September 2016

260. In WhatsApp messages to Mdm. Cynthia Chen, sent at 00:21 on 8 September 2016,

²³¹ Core Bundle 3, page 63.

²³² Core Bundle 2; page 87, paragraph 4(h).

²³³ Witness Evidence Bundle 4, page 1569.

²³⁴ Core Bundle 3, page 67A.

Mr. Brian Liu informed her:²³⁵

“Kin spoke to Mr dai

Kin will bring our funder to see mr dai on Sunday

Let’s work out the details tomorrow”

In a WhatsApp message sent at 02:26 on 8 September 2016, she replied, “It looks quite smooth.



261. For her part, Mdm. Cynthia Chen said:²³⁶

“Dai never talked to me about these matters. In fact, during this period of time, I never heard from Mr Dai at all, other than getting his phone number.”

Of the information in Mr. Brian Liu’s WhatsApp messages on this topic, she said, “First, I wasn’t sure about the truth or otherwise of this piece of information because neither Dai nor Kin provided any information to me about the meeting.”²³⁷ Of the prospective meeting, she said:²³⁸

“I could only laugh out loud because mention of meetings had been made many many times; and almost inevitably, those meetings ended up very unhappily.”

262. In WhatsApp messages to Mdm. Cynthia Chen, sent on and between 08:48 and 08:52 on 8 September 2016, Mr. Brian Liu wrote:²³⁹

“Could I call you?

May I know what time and where will mr dai want to meet with Kin and Mr Lee (our investor) on Sunday?

Also, kin would like to invite Mr Dai for dinner on Sunday - could I ask you to recommend a restaurant?”

In a message, sent at 10:31, Mr. Brian Liu wrote, “get well soon 😊”. There was no reply message.

²³⁵ Core Bundle 1, page 200.

²³⁶ Transcript; 10 January 2025, pages 87-89.

²³⁷ Transcript; 10 January 2025, page 89.

²³⁸ Transcript; 10 January 2025, page 90.

²³⁹ Core Bundle 1, page 200.

263. In an email to Mr. Warren Lee, sent at 2:03 pm on 8 September 2016, Mr. Brian Liu wrote, “As spoken, attached please find our analysis on the Target company.”²⁴⁰

9 September 2016

264. In an email to Mr. Kin Chan, sent at 1:00 PM on 9 September 2016, under the Subject heading: ‘Arrangement - trip to Beijing’, Mr. Brian Liu wrote:²⁴¹

“Kin,

Cynthia told me Dai told you about trip arrangements himself. May I know what Dai told you?

Cynthia said she isn’t privy to these arrangements, for some strange reasons.”

265. For her part, whilst she said that she couldn’t remember exactly, having regard to the WhatsApp messages and the email, “...there must have been a telephone conversation between myself and him”.²⁴² Then, she added:²⁴³

“I wasn’t feeling well that day and I’ve been put up with that kind of emotions for a long time already; and therefore, I remember telling Brian bluntly that... he had approached the wrong person and he should not have bothered me like that.”

266. In cross-examination, Mdm. Cynthia Chen said that she had received the WhatsApp messages whilst on the way to work. She did not intend to read them, but she received a telephone call from Mr. Brian Liu. She was impolite to him in their conversation, saying something like, “You have found the wrong person all along. This is not right for you to keep on bothering me.” Of the request to provide a recommendation for a restaurant in Beijing, she told him, “Are you serious?”²⁴⁴

11 September 2016 - Beijing meeting

267. Mr. Dai, his assistant, Ms. Hu Lee Kue, Mr. Lee Seng Hui, Mr. Warren Lee and Mr. Kin Chan were present and participated at the meeting in Beijing on 11 September 2016.²⁴⁵ In his oral evidence-in-chief, Mr. Dai said that previously, Mr. Kin Chan had told him that the price

²⁴⁰ Core Bundle 3, page 94.

²⁴¹ Core Bundle 3, page 69.

²⁴² Transcript; 10 January 2025, pages 91-92.

²⁴³ Transcript; 10 January 2025, page 92.

²⁴⁴ Transcript; 15 January 2025, pages 7-8.

²⁴⁵ Core Bundle 1, page 41.

was now HK\$2.75 and the Beijing meeting was arranged.²⁴⁶ It was only at the meeting that he realised that the buyer was Mr. Lee Seng Hui, the son of Mr. Lee Ming Tee of the Allied Group, of whom he said:²⁴⁷

“...they are very decisive... and they ... would make a comprehensive acquisition. It will be unlike the previous offerer that they would have a lot of... tricks or some small gestures here and there... So at that meeting, so we would just like having a gentleman’s agreement.”.

268. Of the other terms, he said there was discussion about the acquisition of all the shares and retention of staff for a year, together with some small conditions of his personal benefits. It was agreed that the buyer would be able to perform due diligence. Mr. Albert Fung, Dan Form’s financial controller, had previously worked in the company when it was owned by the Allied Group.²⁴⁸

Contact with Mdm. Cynthia Chen

269. On either 11 or 12 September 2016, he made a long distance phone call to Mdm. Cynthia Chen and told her there was a non-legally binding understanding about the sale of his shares. He called her, “Because she is an important staff of the company, and also that she’s involved... with this transaction.”²⁴⁹

270. In a WhatsApp message to Mdm. Cynthia Chen, sent at 20:55, Mr. Brian Liu informed her:²⁵⁰

“The meeting went well today, and chairman said he wants to start due diligence tomorrow.”

271. At 21:07 on 11 September 2016, Mdm. Cynthia Chen replied, “got it👉”.²⁵¹ In cross-examination, Mdm. Cynthia Chen said that she had not read the messages before she had replied at 21:07.²⁵²

²⁴⁶ Transcript; 5 December 2024, page 26.

²⁴⁷ Transcript; 5 December 2024, page 29.

²⁴⁸ Transcript; 5 December 2024, pages 29-31.

²⁴⁹ Transcript; 5 December 2024, page 33.

²⁵⁰ Core Bundle 1, page 201.

²⁵¹ Core Bundle 1, page 201.

²⁵² Transcript; 15 January 2025, page 9.

12 September 2016

272. In her evidence-in-chief, Mdm. Cynthia Chen said that before 9:00 am on 12 September 2016 she had received a call on her way to work from Mr. Dai in which he had told her something like, “I met Chen’s funds yesterday so that non-legally binding expression of interest or offer could continue to be discussed.”²⁵³ She understood that she was to prepare an NDA for signature. He said nothing about the price.²⁵⁴ She confirmed that she had received a WhatsApp message, sent at 9:25 am on 12 September 2016, in which Mr. Brian Liu asked her to check, “if the NDA is ready?”²⁵⁵

273. In an email to Mr. Brian Liu, sent at 9:30 am on 12 September 2016, Mdm. Cynthia Chen, through her assistant, Mdm. Anita Tsang, attached a non-disclosure agreement for his attention.²⁵⁶ She knew that it related to the acquisition of Mr. Dai’s shareholding. It was prepared for her signature as company secretary of Dan Form. Of the 18 seconds Voice Call noted on her telephone, she remembered that she had explained to him that the NDA was a template with blanks that were not filled in yet.²⁵⁷

274. In his oral evidence, Mr. Warren Lee said that at about 5:00 pm on the afternoon of 12 September 2016 he and colleagues from Yu Ming Investment Management Limited visited the Kowloon Bay offices of Dan Form to commence due diligence of that company. There, he met Mdm. Cynthia Chen for the first time. Also, he met Mr. Albert Fung, the financial controller. The purpose of the visit was to inspect Dan Forms books and records, in particular its financial statements, to confirm that they accorded with Mr. Brian Liu’s analysis.²⁵⁸

275. In an email to Mdm. Cynthia Chen copied to Mr. Warren Lee, sent at 17:55 on 12 September 2016 under the Subject heading: ‘Name of ultimate holder of the buyer’, Mr. Brian Liu identified the buyer as being Tian An China Investments Company Limited.²⁵⁹ In earlier telephone conversations with Mr. Brian Liu, Mdm. Cynthia Chen said that she insisted that he²⁶⁰:

²⁵³ Transcript; 10 January 2025, page 94.

²⁵⁴ Transcript; 10 January 2025, page 95.

²⁵⁵ Core Bundle 1, page 201.

²⁵⁶ Core Bundle 3, page 72.

²⁵⁷ Transcript; 15 January 2025, page 14.

²⁵⁸ Transcript; 9 December 2024, page 93-94, 119-120.

²⁵⁹ Core Bundle 3, page 70.

²⁶⁰ Transcript 10; January 2025, page 96.

“...should not send these to me via WhatsApp or just verbally say it to me. He should do it in black and white via emails, and then that email should also be cc’d to Warren Lee.”

13 September 2016

276. A series of emails between Stephenson Harwood, Dan Form’s solicitors, and Mdm. Cynthia Chen and her subordinates on 12 and 13 September 2016 under the Subject heading: ‘Dan Form - Rule 3.7 Announcement’ addressed preparations taken by the solicitors and Dan Form to make an Announcement, if required by the Commission, of the negotiations in respect of Mr. Dai’s Sale Shares.²⁶¹ In her evidence-in-chief, Ms. Cynthia Chen said that in practice in such circumstances Mr. Dai had communications with the lawyers who, in turn, communicated with her. In the event, Stephenson Harwood advised that the Commission had said that it was not necessary to make a Rule 3.7 Announcement.²⁶² None was made, until after the SPA between the parties was signed on 19 September 2016.

14 September 2016

277. In an email to Mdm. Cynthia Chen, sent at 00:49 on 14 September 2016, under the Subject heading: ‘Project Tianmimi - SPA Draft’, Mr. Warren Lee attached the first draft of the SPA.²⁶³

19 September 2016 - SPA

278. In his supplemental witness statement, Mr. Dai said that amongst other persons, he, together with Mdm. Cynthia Chen and legal advisers, Mr. Lee Seng Hui together with various advisers, and Mr. Warren Lee met at the offices of Dan Form on 19 September 2016 to conclude the drafting of the SPA.²⁶⁴ In his oral testimony, Mr. Warren Lee said that the meeting commenced at 11:00 am and, agreement having been reached, the parties signed the SPA at about 5:30 pm that afternoon.²⁶⁵

22 September 2016 - Announcement

279. In a Joint Announcement, dated 22 September 2016 (published at 22:51 hours²⁶⁶), Tian

²⁶¹ Core Bundle 1, pages 144-147.

²⁶² Transcript; 13 January 2025, pages 10-12.

²⁶³ Core Bundle 1, pages 153-179.

²⁶⁴ Core Bundle 2; page 48, paragraph 4(r).

²⁶⁵ Transcript; 9 December 2024, pages 95-96, 100.

²⁶⁶ Core Bundle 1, page 35-Chronology.

An, Dan Form and Autobest announced that application had been made by each of Dan Form and Tian An to the SEHK for resumption of trading in the shares of Dan Form and Tian An with effect from 9:00 am on 23 September 2016.²⁶⁷ Trading in those shares had been halted with effect from 9:00 am on 20 September 2016 at the request of the respective companies. After trading hours on 19 September 2016, those companies had entered into a Sale and Purchase Agreement in which the offeror had conditionally agreed to acquire and the vendor conditionally agreed to sell the Sale Shares, namely approximately 452 million Dan Form shares, approximately 36.45% of Dan Form shares in issue, for a total consideration of about HK\$1.245 billion, namely equivalent to HK\$2.75 per sale share. In consequence, it was noted that the offeror will be required to make a conditional mandatory cash offer for all the Dan Form shares. Yu Ming would do so on behalf of the offeror at HK\$2.75 in cash per share.

²⁶⁷ Core Bundle 1, pages 11-30.

CHAPTER 8

THE SALE OF MR. DAI'S SHARES: MDM. CYNTHIA CHEN'S PARTICIPATION AND/OR ROLE IN AND KNOWLEDGE OF COMMUNICATIONS FROM ASM AND OTHERS

Point of contact

280. It is clear that, from 4 August 2016 onwards, ASM considered Mdm. Cynthia Chen as the point of contact with Mr. Dai in their attempts to acquire his shares in Dan Form. In his email to Mr. Brian Liu, sent at 1:25 pm on 20 August 2016, in which Mr. Kin Chan initiated the resumption of those attempts he said, "Please contact Cynthia ASAP. Tell her the following..."²⁶⁸

281. The email, dated 4 August 2016, was addressed to Mr. Dai, Mdm. Cynthia Chen and Anita but the text stated, "To Chairman Dai".²⁶⁹ On Mr. Kin Chan's instructions, as evidenced by a WhatsApp message from Mr. Brian Liu to Mdm. Cynthia Chen at 22:37 on 6 August 2016, Mr. Brian Liu had contacted her to arrange a meeting between Mr. Kin Chan and Mr. Dai.²⁷⁰ His opening statement in the message, "Let's confirm it again", was clearly related to their earlier contacts in which the arrangement to meet at 3:00 pm on Sunday at the Island Shangri-La had been reached. As evidence of her role in assisting Mr. Dai, Mdm. Cynthia Chen sent WeChat messages to Mr. Dai on 7 August 2016. At 00:01, she told him that the meeting was, "At Island Shangri-La lobby at 3 p.m. tomorrow". Then, at 14:47 he informed her, "At the coffee house now."²⁷¹ The email, dated 2 September 2016, containing the proposal of a price of HK\$2.75 per share, was specifically addressed to "Mr. DAI and Cynthia".²⁷²

Relationship: Mr. Dai/Mdm. Cynthia Chen

282. We readily accept Mr. Kin Chan's opinion that Mdm. Cynthia Chen and Mr. Dai were "...very close professionally", that she was capable and very knowledgeable about the company and that he "relies on her quite a lot."²⁷³ That opinion resonated with the evidence of Mr. Dai, as to why he made a telephone call to Mdm. Cynthia Chen on either 11 or 12 September 2016, to inform her of the progress achieved in the meeting in Beijing, namely:

²⁶⁸ Core Bundle 3, page 1.

²⁶⁹ Core Bundle 1, page 183.

²⁷⁰ Core Bundle 1, page 204A.

²⁷¹ Core Bundle 1, pages 227-228, 233-234.

²⁷² Core Bundle 1, page 125.

²⁷³ Transcript; 4 December 2024, pages 95-96.

“Because she is an important staff of the company, and also that she’s involved with ...this transaction.”²⁷⁴

The Shangri-La meeting

283. We do not accept Mdm. Cynthia Chen’s evidence that she did not think the meeting at the Shangri-La hotel had been arranged for discussion of ASM’s acquisition of Mr. Dai’s shares in Dan Form, rather it was a meeting for maintaining the shareholder and company relations.²⁷⁵ Mr. Brian Liu’s email, dated 4 August 2016, whilst expressing an intention to acquire the shares at HK\$2 per share, stated in terms, “We look forward to negotiate with you.” Given that the closing price of Dan Form shares on 4 August 2016 was HK\$1.94, clearly the price stipulated by ASM of HK\$2 per share was merely a ‘range-finding’ shot.²⁷⁶

Mdm. Cynthia Chen’s role as an interpreter

284. There is a broad consensus in the evidence of Mr. Kin Chan, Mr. Brian Liu and Mr. Dai about the limited ability of Mr. Kin Chan to converse in Mandarin with Mr. Dai at the Shangri-La meeting, and as to the role of Mdm. Cynthia Chen to interpret, when required. We accept the evidence of Mr. Dai that he and Mr. Kin Chan, “...were able to communicate directly for the most part, so Ms. CHEN only helped me interpret with CHAN Kin when necessary during the entire discussion.”²⁷⁷

285. Significantly, Mr. Dai’s evidence that at the meeting he proposed to sell his shares at HK\$3 per share²⁷⁸ and Mr. Brian Liu’s email account of the discussions at the Shangri-La meeting, dated 3 September 2016, are at one: “His offer is \$3/share, while our bid is \$2/share.”²⁷⁹ In short order, the parties had established their initial bargaining positions. We are satisfied that Mdm. Cynthia Chen’s tortuous attempts in her evidence to distance herself from any knowledge of the primary issue of what was being discussed by Mr. Dai and Mr. Kin Chan in her presence, namely the proposed price, was entirely disingenuous. We are satisfied that she was aware at the time of the meeting that Mr. Dai’s offer was at HK\$3 per share.

²⁷⁴ Transcript; 5 December 2024, page 33.

²⁷⁵ Transcript; 9 January 2025, page 79.

²⁷⁶ Core Bundle 1, page 5.

²⁷⁷ Core Bundle 2; page 40, paragraph 4(j).

²⁷⁸ Core Bundle 2; page 40, paragraph 4(j).

²⁷⁹ Witness Evidence Bundle 15, page 9009.

G-Resources / Potential Investor

286. Similarly, although she had been present at a meeting on 27 June 2016 among Mr. Dai, G- Resources, the Potential Investor and their respective advisers, at which the acquisition of his shares was discussed, in her evidence Mdm. Cynthia Chen suggested, in effect, that her focus at the meeting was on anything other than the proposed purchase price. She said that she could not even remember if it had been discussed.²⁸⁰ Belying that evidence was the evidence of Mr. Dai, who pointed out that at the meeting an acquisition price of HK\$2.60 was proposed, albeit no conclusion was reached on the terms and price. Further, a draft Sale and Purchase Agreement was circulated on 29 June 2016 stating a proposed purchase price of HK\$2.50 per share. The Stephenson Harwood Chronology of Events stated that the circulation of the document was done through Mdm. Cynthia Chen as company secretary.²⁸¹ We are satisfied that Mdm. Cynthia Chen was aware of those proposed purchase prices of the shares at the time that they were made.

Contemporaneous electronic/documentary records

287. Whilst the oral evidence of events, in and between June and September 2016, was received by the Tribunal more than eight years after those events had occurred, there was available and the Tribunal received contemporaneous electronic/documentary records. They included WhatsApp communications made between Mr. Brian Liu and Mdm. Cynthia Chen, together with emails to and from Mr. Brian Liu and/or Mr. Kin Chan and Mdm. Cynthia Chen. Also, there was evidence of oral conversations between them, sometimes at face-to-face meetings and on other occasions by telephone. Some of those conversations were described in the electronic/documentary records. It is clear that the references to statements attributed to Mdm. Cynthia Chen were recorded in those records within minutes or hours of the making of the statements.

288. Clearly, Mr. Brian Liu was engaged in discharging professional duties. He was reporting important information to the Chief Investment Officer and co-founder of ASM, with whom he was working as a team member in the project to acquire Mr. Dai's Sale Shares. He was doing so contemporaneously. The accuracy of the information he provided was clearly essential. The style of his reports was professional and succinct, addressing important points. Why would Mr. Brian Liu's contemporaneous reports to Mr. Kin Chan be anything other than

²⁸⁰ Transcript; 16 January 2025, page 17.

²⁸¹ Core Bundle 1; page 81, paragraph 8.

materially accurate? Even more so, why would he make false reports?

An email report of the meeting on 2 September 2016

289. An email to Mr. Kin Chan, sent at 10:39 on 3 September 2016, by Mr. Brian Liu reported discussions that he had at a meeting at Dan Form offices with Mr. Dai and Mdm. Cynthia Chen in the afternoon of Friday, 2 September 2016, “Kin, I met Dai and Cynthia to go through our proposal. Here are responses from Dai”. He was reporting the results of the meeting to his boss, whom he knew to have direct contacts with both Mdm. Cynthia Chen and Mr. Dai.²⁸²

Email reports of conversations

290. In other emails he sent to Mr. Kin Chan, Mr. Brian Liu reported conversations that he had with Mdm. Cynthia Chen in which asserted, “I spoke to Cynthia” or “I spoke to Cynthia again”, after which he attributed various statements to her. Again, Mr. Brian Liu was reporting to his boss conversations that he had as a result of having been asked to contact Mdm. Cynthia Chen. Again, he knew that Mr. Kin Chan was in direct contact with Mdm. Cynthia Chen. For example, the statement that Mr. Brian Liu had attributed to Mdm. Cynthia Chen in his email to Mr. Kin Chan sent at 5:46 pm on 23 August 2016, “She doesn’t know if Dai has the intention to sell”²⁸³ was referred to by Mr. Kin Chan in his email to Mdm. Cynthia Chen, copied to Mr. Brian Liu, sent at 6:51 pm on 23 August 2016, “Brian said Dai is undecided”.

291. In all those circumstances, we are satisfied that it is inherently likely that the records made by Mr. Brian Liu are accurate as to their contents, in particular as to the attribution of statements made by Mdm. Cynthia Chen.

Mdm. Chen’s denial of statements attributed to her in emails

292. In her oral evidence, Mdm. Cynthia Chen denied having made many of the statements attributed to her by Mr. Brian Liu in his WhatsApp messages and emails sent to Mr. Kin Chan.

Failure to cross-examine

293. However, in cross-examination of Mr. Brian Liu, issue was taken by Ms. Tse in respect of only one of those statements, namely whether she had sounded surprised that ASM was still interested, given that it was a fund. That statement was attributed to her by Mr. Brian Liu in his

²⁸² Core Bundle 3, page 53.

²⁸³ Core Bundle 3, page 35.

email to Mr. Kin Chan, sent at 10:29 on 22 August 2016. It was suggested that was his “guess”. His response was robust:²⁸⁴

“That’s not my guess of what Cynthia said. That’s what Cynthia told me. Cynthia told me that she was surprised because, given that ASM is a fund. I was stating a fact, I was not speculating.”

Mr. Brian Liu was not challenged in cross-examination in respect of the other statements he attributed to Mdm. Cynthia Chen in those records.

The invitation to apply for the recall of Mr. Brian Liu for further cross-examination.

294. As noted earlier in Chapter 5, the failure of Ms. Tse to cross-examine witnesses, including Mr Brian Liu, on material matters that were in dispute with Mdm. Cynthia Chen’s case, was raised specifically in the Commission’s written Closing Submissions and the Tribunal was invited to place weight on that failure in its assessment of the evidence. In particular, issue was taken with the failure to challenge statements described in emails from Mr. Brian Liu to others within ASM attributing oral statements made to him by Mdm. Cynthia Chen in their conversations.

295. In those circumstances the Tribunal invited Mdm. Cynthia Chen to consider making an application for leave that Mr. Brian Liu be recalled for further cross-examination. In a considered determination declining the invitation, Ms. Tse asserted that no useful purpose would now be served in further cross-examination of Mr. Brian Liu, since following the closure of the evidence Mr. Brian Liu was no longer prohibited from discussing the case with other persons in the present Inquiry.

296. We do not accept there is any merit in that submission. First, because Mr. Brian Liu was not recalled it is simply not known whether or not he did have any such conversations that were relevant to the issue at hand. Secondly, in any event the simple matter at issue was whether or not the contemporaneous records he made many years earlier in emails within ASM of conversations in which he attributed statements made by Mdm. Cynthia Chen to him were accurate or whether they were inaccurate or even false. Those conversations were between Mdm. Cynthia Chen and Mr. Brian Liu and not witnessed by others. Accordingly, it is difficult to imagine any relevance at all of having had conversations with others about such events after

²⁸⁴ Transcript; 11 December 2024, page 85.

having given his evidence.

297. Of course, it was entirely a matter for Mdm. Cynthia Chen to determine whether or not to make an application for the recall of Mr. Brian Liu for further cross-examination, so that she could ameliorate the criticism made of her made by the Commission that her case had not been put to Mr. Brian Liu in cross-examination in respect of material matters and the invitation to the Tribunal to have regard to that fact in weighing the evidence in the case. However, having determined not to make that application, the fact remains that Mr. Brian Liu was not challenged in various respects in his evidence of material statements he attributed to Mdm. Cynthia Chen.

Conclusion

298. In those circumstances, we are satisfied that it is open to the Tribunal to have regard to that fact as one of the factors relevant to considering and assessing the evidence.

The proposed price per share

299. Many of those statements attributed to Mdm. Cynthia Chen evidence a role she played in the negotiations with ASM on behalf of Mr. Dai. Clearly, the negotiations on the issue of price were fast moving.

- (i) The initial position on the proposed price to acquire the shares that, on 20 August 2016, Mr. Kin Chan had directed Mr. Brian Liu to convey to Mdm. Cynthia Chen was.²⁸⁵
 - \$3/share is a bit high;
 - We will do this deal if he agrees to the following structure
 - We launch a GO at \$2.xx a share.
- (ii) In his email, sent at 10:29 am on 22 August 2016, Mr. Brian Liu said that, in response to delivery to her of that message as to price, Mdm. Cynthia Chen had said that the price “will be “closer to \$3 than \$2”, or Dai won’t be interested to talk.”²⁸⁶ [Mdm. Cynthia Chen denied having said that.]
- (iii) In his email, sent at 2:42 pm on 22 August 2016, Mr. Brian Liu reported that Mdm. Cynthia Chen had responded to his statement that, “we can “talk about” \$2.5, subject to our proposed structure”, by asking if ASM had “flexibility” and stating

²⁸⁵ Core Bundle 3, page 1.

²⁸⁶ Core Bundle 3, page 18.

that ASM “will probably need to increase “a bit more”.²⁸⁷ [Mdm. Cynthia Chen denied having said that.]

- (iv) In his email sent at 5:46 pm on 23 August 2016, Mr. Brian Liu reported that Mdm. Cynthia Chen said that, “She spoke to Dai about our proposal (including the price of \$2.5). She said that Dai didn’t say anything.”²⁸⁸ [Mdm. Cynthia Chen said she would not have talked to Mr. Dai.]

Mr. Dai’s reply: 25 August 2016

300. Mdm. Chen’s role in sending the email to Mr. Kin Chan, copied to Mr. Brian Liu, at 3:29 pm on 25 August 2016, setting out Mr. Dai’s reply is entirely consistent with the role she played as evidenced by the earlier emails set out above. Of the issue of price, she stated Mr. Dai’s position to be:²⁸⁹

“The price that Mr DAI offered at the meeting in Shangri-La is the basis”.

Significantly, having also stated, “Whenever is convenient for you, welcome to negotiate with Mr DAI”, the email concluded, “Relayed by CHAN Si ying on behalf (of Mr DAI)”.

301. In an email to Mr. Kin Chan, sent at 9:56 on Wednesday, 7 September 2016, Mr. Brian Liu reported a conversation about the “new proposal” that he said he had with Mdm. Cynthia Chen, stating that “I spoke to Cynthia again.”²⁹⁰ A series of statements were attributed to her:

Cynthia said Dai didn’t say anything on our new price of \$2.7/shr;

Cynthia said Dai wants us to send him the draft SPA;

Cynthia said Dai doesn’t have any issue on the condition precedent of HK\$30mm undisclosed liabilities;

She asked how much cash we will put up as deposit;

She also asked if Dai needs to pay an equal amount of break fee.

In her oral evidence, Mdm. Cynthia Chen denied having made those statements to Mr. Brian Liu, “How could that be possible? ... No.”²⁹¹

²⁸⁷ Core Bundle 3, page 21.

²⁸⁸ Core Bundle 3, page 35.

²⁸⁹ Core Bundle 1, pages 99A and 123.

²⁹⁰ Core Bundle 3, pages 61-62.

²⁹¹ Transcript; 10 January 2025, pages 83-84.

Unread email Proposal: 2 September 2016

302. In prospect of the meeting at Dan Form's offices on 2 September 2016, having received a WhatsApp message, sent at 12:48 on 2 September 2016, from Mr. Brian Liu asking her to print a few copies of a proposal that he had just sent to her by email, Mdm. Cynthia Chen replied at 12:57, "Done".²⁹² The email and its text, sent by Mr. Brian Liu at 12:47 on 2 September 2016, was addressed to Mr. Dai and Mdm. Cynthia Chen.²⁹³ She confirmed that she had printed out the attached Proposal Letter, which was available at the meeting when it was convened later.²⁹⁴ However, in her oral evidence in cross-examination she denied that she had read the Proposal Letter.²⁹⁵

303. It is inherently unlikely that, in the knowledge that the meeting with Mr. Brian Liu had been convened at Mr. Dai's specific directions, in which she had played a significant part in making arrangements, and knowing that Mr. Brian Liu had been put to the considerable inconvenience of changing his flights and taking a pre-dawn flight to return to Hong Kong, given that she was also to attend the meeting, that Mdm. Cynthia Chen would not have read the Proposal Letter. It was only 3 pages in length. In the middle of the first page, beneath the bold heading, 'Tender Offer', opposite the heading 'Acquisition Price' it was stated simply that the acquisition price was HK\$2.75 per ordinary share.

Unread WhatsApp messages

304. In her evidence, Mdm. Cynthia Chen said of Mr. Brian Liu's WhatsApp messages to her that in some instances, even though she had replied to the messages, she had not even read them. A case in point were the WhatsApp messages to Mdm. Cynthia Chen, sent on and between 14:24 and 14:27 on 6 September 2016, in which Mr. Brian Liu summarised the terms of a "new proposal" he had conveyed to Mdm. Chen orally by telephone.²⁹⁶ His messages included, "We will sign binding SPA at fixed \$2.7, without adjustment mechanism". Although the terms of the new proposal were succinctly summarised in only 72 words, to which she had replied "got it 🍗". Mdm. Cynthia Chen said that she had not read the messages.²⁹⁷

305. Of the statement attributed to her by Mr. Brian Liu in an email sent at 2:51 pm on

²⁹² Core Bundle 1, page 193.

²⁹³ Core Bundle 1, pages 125-128 and pages 140-143.

²⁹⁴ Transcript; 10 January 2025, page 58.

²⁹⁵ Transcript; 13 January 2025, pages 100-101.

²⁹⁶ Core Bundle 1, pages 194-195.

²⁹⁷ Transcript; 14 January 2025, pages 4-5.

6 September 2016, namely that, Mr. Liu having spoken to her about the new proposal of a binding offer at fixed HK\$2.7, she had said that she would talk to Mr. Dai, Mdm. Cynthia Chen denied that she had said that.²⁹⁸

306. It is inherently unlikely that, as Dan Form's company secretary, having been asked by Mr. Dai to accompany him to the meeting at the Shangri-La hotel with Mr. Kin Chan and Mr. Brian Liu on 7 August 2016 to discuss the offer to buy Mr. Dai's shares, and thereafter having been the recipient of emails from both of them and the recipient of WhatsApp messages from Mr. Brian Liu addressing the subject of the acquisition of Mr. Dai shares, that Mdm. Cynthia Chen would choose not to even read some of such WhatsApp messages. The more so, in circumstances where she obviously had replied to the messages.

Requests of Mr. Brian Liu: not to send WhatsApp messages - send emails

307. Mdm. Cynthia Chen's evidence that she had repeatedly requested Mr. Brian Liu not to send WhatsApp messages, but to send emails is entirely unsupported by any other evidence. She acknowledged that it was not to be found in any WhatsApp message.²⁹⁹ Further, it was not a matter that was canvassed in any way whatsoever with Mr. Brian Liu in a lengthy cross-examination. We reject that evidence.

The tone of the meetings amongst Mr. Dai, Mr. Kin Chan and/or Mr. Brian Liu

308. We reject Mdm. Cynthia Chen's evidence that the tone of the meetings amongst Mr. Dai, Mr. Kin Chan and/or Mr. Brian Liu was unfriendly. Her evidence that the meeting at the Shangri-La hotel on 7 August 2016 ended with Mr. Kin Chan and Mr. Dai exchanging barbed retorts³⁰⁰ was not a matter canvassed in cross-examination of either of those witnesses or Mr. Brian Liu. It is inconsistent with the tone of her WhatsApp exchanges with Mr. Brian Liu subsequently, which she peppered with Smiley emojis, and her email exchanges with Mr. Kin Chan. Similarly, her evidence that Mr. Brian Liu had behaved aggressively towards Mr. Dai at the telephone conference meeting on 31 August 2016³⁰¹ and that the meeting on 2 September 2016 amongst Mr. Dai, Mr. Brian Liu and herself had ended with Mr. Dai upbraiding Mr. Brian Liu³⁰² were not matters suggested in cross-examination of any of those witnesses. Further, that evidence was wholly inconsistent with the evidence of the fact and tone of the ongoing

²⁹⁸ Transcript; 10 January 2025, pages 68-69.

²⁹⁹ Transcript; 14 January 2025, page 24.

³⁰⁰ Transcript; 10 January 2025, pages 8-9.

³⁰¹ Transcript; 10 January 2025, pages 52-53.

³⁰² Transcript; 10 January 2025, page 59.

communications and meetings between the parties.

Conclusion

309. We reject Mdm. Cynthia Chen’s evidence that she did not read many of the WhatsApp messages sent to her by Mr. Brian Liu. We are satisfied that she did read all of them. Her evidence to the contrary, was part of an elaborate, false charade that she presented to the Tribunal, in which she sought to distance herself from involvement in the negotiations for the acquisition of Mr. Dai’s shares.

310. In particular, we are satisfied that not only did Mdm. Cynthia Chen read the WhatsApp messages from Mr. Brian Liu on and between 14:24 and 14:27 on 6 September 2016, in which a ‘new proposal’ of a fixed price of HK\$2.7 per share was advanced, but also that she had discussed them with him on the telephone, as evidenced by his reference in his message, “just to summarize”. Further, she sought to pass on that information immediately to Mr. Dai. She did so in a WeChat message to Mr. Dai, sent at 14:30 on 6 September 2016, when she asked him to contact her because, “... it is necessary to report matters regarding CHEN’s funds”.³⁰³ No doubt, those WhatsApp messages, together with the subsequent WhatsApp messages, sent on and between 18:41-18:58 and at 19:13, in which Mr. Brian Liu resiled from the proposed “fixed \$2.7” price and indicated that, if it was “absolutely necessary”, Mr. Kin Chan would “stick to \$2.75.”³⁰⁴ were amongst the matters she discussed with Mr. Dai in their voice call at 9:48 pm on 6 September 2016. She had told Mr. Brian Liu that she would talk to Mr. Dai about the new proposal summarised in his WhatsApp messages on and between 14:24 and 14:27. That was reflected in his report to Mr. Kin Chan in an email at 2:51 pm on 6 September 2016.³⁰⁵

311. We found Mr. Brian Liu to be an honest, measured and reliable witness. We accept his evidence in respect of the statements in the electronic/documentary records attributed to Mdm. Cynthia Chen and of his description of the events there described.

312. In the result, we have no hesitation in being satisfied that Mdm. Cynthia Chen knew of the information contained in the WhatsApp messages and emails sent to her by Mr. Brian Liu and Mr. Kin Chan at the time that she received those communications. Similarly, we are satisfied that she made the statements attributed to her by Mr. Brian Liu in his emails to Mr. Kin Chan. We find that she was heavily engaged on behalf of Mr. Dai in the negotiations with

³⁰³ Core Bundle 1, page 229.

³⁰⁴ Core Bundle 1, pages 219 to 222.

³⁰⁵ Core Bundle 3, page 59.

ASM and others for the acquisition of his shares. Also, we are satisfied that at the time that she received and printed the Proposal Letter immediately prior to 12:57 on 2 September 2016 she read it and knew of its contents, including that now the proposed acquisition price was HK\$2.75 per ordinary share. Further, she knew that in the discussions at the meeting that price was acceptable to Mr. Dai, subject to further discussions about particular terms, as described in Mr. Brian Liu's report to Mr. Kin Chan in his email sent at 10:39 on 3 September 2016.

CHAPTER 9

INSIDE INFORMATION

The evidence of Mr. Leung Yiu Man

313. Mr. Leung Yiu Man provided a report, dated 3 October 2023³⁰⁶, and gave oral evidence in which he expressed opinions in respect of whether stipulated information was inside information, in particular whether that information was likely to materially affect the price of Dan Form securities, if it had been known to those who traded in or were likely to trade in Dan Form securities.

Expertise

314. Mr. Leung's *curriculum vitae* was attached as Appendix 1 to his report.³⁰⁷ He was the Responsible Officer and a director of Austen Capital Management Limited and had been since 2017. He was responsible for monitoring the company's compliance with issues applicable to the Commission and other regulatory authorities. He is a Chartered Financial Analyst of the Chartered Financial Analyst Institute, USA and a Chartered Member of the Hong Kong Society of Financial Analyst and had been since 1994. He held Type 4 (Investment Advisory) and Type 9 (Asset Management) licences issued by the Commission. He had been involved continuously in the financial industry since 1990, in particular in equity research coverage and had been employed variously at W.I. Carr (Far East) Limited, Dresdner Kleinwort Benson, Deutsche Asia Limited, China International Capital Corporation and Morgan Stanley Asia.

315. Mr. Leung has been accepted as an expert witness in proceedings before the Insider Dealing Tribunal, of which McMahon, J. was Chairman, into dealings in the shares of Tingyi (Cayman Islands) Holding Corporation in July 2000.³⁰⁸ In those proceedings, he was called to give evidence on behalf of a Specified Person.

Expert witness

316. No issue was taken with Mr. Leung's expertise and the Tribunal accepted his evidence as being that of an expert witness.

³⁰⁶ Expert Evidence Bundle 3, pages 1402-1421.

³⁰⁷ Expert Evidence Bundle 3, pages 1421-1 to 1421-4.

³⁰⁸ *Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Tingyi (Cayman Islands) Holding Corporation between 12 July 2000 and 28 July 2000*, dated 11 January 2007.

Instructions

317. In instructions from the Commission, dated 16 January 2023, Mr. Leung was asked to give his expert opinion in respect of specific questions related to inside information, as defined by section 245(1) of the Ordinance, namely specific information, as there defined.³⁰⁹ Having been informed that Mdm. Cynthia Chen was Dan Form's company secretary and the secretary to Dan Form's board of directors, he was provided with assertions as to her knowledge of specific information on four specified dates, namely: (i) 8 September 2016; (ii) 11 September 2016; (iii) 12 September 2016; and (iv) 19 September 2016.

8 September 2016 Information

318. Of the information asserted to be known to Mdm. Cynthia Chen on 8 September 2016, the Commission said:³¹⁰

“On 8 September 2016, Cynthia Chen knew, in addition to the information concerning the Potential Acquisition, Termination, Profit Warning and the approach of Argyle Street personnel to Dai concerning the Proposed Acquisition..., information that Dai was interested to sell the Sale Shares at a price between \$2.7 and \$2.75 per share... and Dai was going to negotiate with the potential purchaser directly on 11 September 2016”.

- (i) The ‘Potential Acquisition’, was a reference to the approach in mid-June 2016 by Mr. Chiu Tao of G-Resources Group Limited to Mr. Dai informing him that a potential investor is interested in acquiring the business of Dan Form;
- (ii) ‘Termination’, was a reference to an Announcement made by Dan Form, dated 19 August 2016, after the market closed, that on or about that date Mr. Dai had informed Dan Form of his decision to terminate the negotiations concerning the Potential Acquisition;
- (iii) ‘Profit Warning’, was a reference to an Announcement, dated 19 August 2016, by Dan Form about a loss sustained by the company during the first half of 2016; and
- (iv) ‘the approach of Argyle Street personnel to Dai concerning the Proposed Acquisition’, was a reference to the approaches made by Mr. Kin Chan and Mr. Brian Liu of AMS, a minority shareholder of Dan Form, between 23 August

³⁰⁹ Expert Evidence Bundle 1, pages 1-11.

³¹⁰ Expert Evidence Bundle 1; page 6, paragraph 23.

and 8 September 2016 to negotiate with Mr. Dai the terms on which a consortium, including ASM, would offer to acquire the Sale Shares, which were Mr. Dai's shareholding of 36.45% of the issued share capital of Dan Form.

319. On the basis of that information provided by the Commission, Mr. Leung said:³¹¹

“...there was no written or verbal agreement, memorandum of understanding or letter of intent concluded and there was no evidence that any specific term was agreed upon by the relevant parties.”

320. In the result, Mr. Leung concluded that:³¹²

“...the Potential Investors would have likely considered the negotiation at the stage of solicitation of business opportunity by the relevant parties had the 8 September Information been generally known to them at the time and would have been unlikely to materially affect the price of Dan Form shares.”

321. However, by an email from the Commission, dated 3 July 2023,³¹³ Mr. Leung was provided with further instructions, namely to consider a New Formulation in respect of the 8 September 2016 Information:³¹⁴

“New Formulation

On 8 September 2016, Cynthia Chen knew in addition to the information concerning the Potential Acquisition, Termination, Profit Warning and the approach of Argyle Street personnel to Dai concerning the Proposed Acquisition... information that:-

- (a) on 2 September 2016 an unidentified potential purchaser (“**Potential Offeror**”) through Brian Liu of Argyle Street offered, to Dai, to acquire the Sale Shares and make a general offer for all outstanding shares at \$2.75;
- (b) on 6 September 2016 Brian Liu asked Dai to accept the offer at a lower price, i.e. \$2.7. He also said a more senior executive of Argyle Street, Kin Chan would ask the Potential Offeror to execute a sale and purchase agreement before its due diligence work began;

³¹¹ Expert Evidence Bundle 3; pages 1412-1413, paragraph 35.

³¹² Expert Evidence Bundle 3; page 1413, paragraph 36.

³¹³ Expert Evidence Bundle 2, pages 1003-1004.

³¹⁴ Expert Evidence Bundle 4, pages 1421-898.

- (c) on 8 September 2016 Kin Chan informed Brian Liu that he had spoken to Dai and he would bring the funder to see Dai on Sunday 11 September 2016.”

Opinion - no mere solicitation of business opportunity; rather, an advanced stage of discussion

322. In light of the new formulation, Mr. Leung expressed the opinion in his report that:³¹⁵

“... the negotiation between Dai and the potential purchaser at the time was not a mere solicitation of business opportunity but at an advanced stage of discussion in relation to the Proposed Acquisition. The potential purchaser through Brian Liu of Argyle Street had offered Dai to acquire the Sale Shares and make a general offer for all outstanding shares at \$2.75 on 2 September 2016. Although Brian Liu revised the offer price to \$2.7 on 6 September 2016, a more senior executive of Argyle Street, Chan Kin, suggested to ask the potential purchaser to execute a sale and purchase agreement, which I believe should typically be legal binding with key transaction details and terms, before they began due diligence. Chan Kin would also bring the potential purchaser to meet Dai on 11 September 2016.”

323. Of his opinion of the significance of that evidence, Mr. Leung said:³¹⁶

“Since Dai expressed his interest to sell the Sale Shares for \$2.7 to \$2.75 per share, I believe that one of the key conditions for the contemplated transaction to successfully proceed, i.e. the matching of the offer price and the target disposal price, was satisfied. Moreover, the potential purchaser’s expressed willingness to execute a sale and purchase agreement before the due diligence, in my view, indicated the potential purchaser’s strong intention to bring the transaction to fruition.”

324. As is apparent from his subsequent oral evidence, when provided with the New Formulation by the Commission, Mr. Leung was not provided with the primary documents, namely the email and WhatsApp messages that were the basis for the assertions that were made there. Importantly, he was not provided with the WhatsApp messages to Mdm. Cynthia Chen from Mr. Brian Liu sent on and between 14:24 and 14:27 and subsequently 18:41-18:58 and at 19:13 on 6 September 2016, in which the new proposal was articulated as “fixed \$2.7”, but subsequently qualified on the basis that, “... If it is absolutely necessary to stick to 2.75, Kin is willing to do it”.

³¹⁵ Expert Evidence Bundle 3; page 1413, paragraph 37.

³¹⁶ Expert Evidence Bundle; page 1413, paragraph 38.

The weight to be attached to Mr. Leung's oral evidence

325. After Mr. Leung had been provided with the emails produced in response to the Notice to ASM, dated 5 December 2024, with no objection from Ms. Tse, and he had been referred to WhatsApp messages, that were in the Hearing Bundles, but had not been provided hitherto to Mr. Leung, Ms. Tse took objection and applied to the Tribunal, “to attach no weight” to Mr. Leung’s oral evidence.³¹⁷ Mr. Lee opposed the application. The Chairman ruled that the weight to be attached to evidence was a matter for the Tribunal as a whole, after it had received directions on law from the Chairman at the end of proceedings.

326. Having heard all the evidence and having received the submissions of the parties, the Tribunal is well-placed to determine what weight to place on Mr. Leung’s oral evidence. The material to which objection was taken was highly relevant to the issues in the case and to his opinion. We are satisfied that no unfairness ensued to Mdm. Cynthia Chen and that there is no reason why the Tribunal should not afford that evidence for weight, which it does.

327. In his oral evidence-in-chief, Mr. Leung was taken to an email and WhatsApp messages. He accepted that:

- the email, sent to Mdm. Cynthia Chen, at 12:47 on 2 September 2016, by Mr. Brian Liu supported the assertion made in paragraph (a) of the new formulation³¹⁸;
- the WhatsApp messages, sent to Mdm. Cynthia Chen at 14:24-14:27 on 6 September 2016, by Mr. Brian Liu supported the assertion made in paragraph (b) of the new formulation³¹⁹; and
- the WhatsApp messages sent to Mdm. Cynthia Chen at 00:21 on 8 September supported the assertion made in paragraph (c) of the new formulation.³²⁰

Specific information: binding / Non-binding offer

328. In cross-examination, Mr. Leung acknowledged that in his report to Mr. Kin Chan of the discussion of the Proposal Letter at the meeting on 2 September 2016³²¹, in his email, sent

³¹⁷ Transcript; 20 December 2024, page 1.

³¹⁸ Transcript; 20 December 2024, page 40.

³¹⁹ Transcript; 20 December 2024, page 42.

³²⁰ Transcript; 20 December 2024, page 45.

³²¹ Core Bundle 1; pages 125-128 and 140-143.

at 10:39 on 3 September 2016,³²² Mr. Brian Liu had identified one of the differences between the parties as being that ASM's offer price of HK\$2.75 was "non-binding", whereas Mr. Dai insisted on a "binding" offer of HK\$2.75. He accepted that the parties had not yet agreed on a binding offer. However, of the relevance of that factor as to whether or not the information was specific, Mr. Leung said:³²³

"I have to emphasise it's not necessary for a binding agreement to be signed for information to be constitute as specific."

329. He disagreed with the suggestion that in those circumstances, "...the deal would still be at the stage of mere solicitation; would you agree?" He explained, "...this is specific. But for if it is a binding agreement, then it would be, I would say, it is much, much more precise and specific. For specific information, so long as it is definable, identifiable and unequivocally expressed, then it is specific."³²⁴ Subsequently, he said, "... if there is sufficient commercial reality to the discussions, then it would already be a specific information."³²⁵

Identity of the offeror

330. Of the issue of the relevance of the identity of the offeror, Mr. Leung pointed out that in the email to Mdm. Cynthia Chen, sent on 23 August 2016, Mr. Kin Chan had said that ASM was a private equity fund and pointed to deals done in the past. Of that, Mr. Leung said:³²⁶

"...whether they are the sole offeror or they are authorised or represented someone else, the terms they offer to Mr Dai becomes relevant as well. And that is what I mean if it is ASM itself making the offer or someone else, it's still relevant."

331. Of the new proposal summarised in the WhatsApp messages to Mdm. Cynthia Chen, sent on and between 14:24 and 14:27 on 6 September 2016, namely of an offer price, "fixed \$2.7", his attention having been drawn to the subsequent qualification in the WhatsApp messages, sent on and between 18:41 and 19:13 on 6 September 2016, that, if "absolutely necessary", Kin Chan would accept an offer price of "\$2.75", Mr. Leung said:³²⁷

³²² Core Bundle 3, page 53.

³²³ Transcript; 20 December 2024 page 97.

³²⁴ Transcript; 6 January 2025, pages 3-4.

³²⁵ Transcript; 6 January 2025, pages 38-39.

³²⁶ Transcript; 6 January 2025, page 16.

³²⁷ Transcript; 6 January 2025, page 29.

“I think according to these WhatsApp messages, it looks to me that the price is almost as good as agreed on... at \$2.75.”

The financial capability of the offeror

332. Of the relevance of the queries raised at an early stage by Mr. Dai, as potential seller, of the financial capability of ASM to complete the transaction, Mr. Leung said:³²⁸

“I think if the offeree did not believe in the financial capability of the offeror, he would not be interested in engaging in the negotiation at all. And therefore, if the negotiation continues, that is an indication that the offeree, at least ... to (a) certain extent, believed that there is commercial reality in such a negotiation and potential offer put forward by the offeror or its representative.”

333. Mr. Leung went on to explain:³²⁹

“In this case, I think ASM again tried to show their financial capability. And I think Mr Dai understands that there was someone else behind as well, so I think the negotiation has been ongoing in this kind of fashion.”

Potential investors

334. Of his opinion as to the identity of “potential investors” in Dan Form shares in the “Relevant Period”, namely between June and September 2016 [Clearly intended and taken to mean in and between June and September 2016], Mr. Leung wrote that they:³³⁰

“...would include both institutional and retail investors who had previously traded or had an interest in carrying out trades in the shares of Dan Form. Such interest might arise from, but not limited to, reasons such as the fundamentals of the sector or the Company, technical analysis, news, rumors, investment research reports, recommendations by investment advisers or other persons etc.”

Market capitalisation/trading in Dan Form shares

335. Mr. Leung calculated that, in the period from 1 June to 19 September 2016, the following data relevant to identifying potential investors in Dan Form:³³¹

³²⁸ Transcript; 6 January 2025, page 43.

³²⁹ Transcript; 6 January 2025, page 46.

³³⁰ Expert Evidence Bundle 3; page 1411, paragraph 27.

³³¹ Expert Evidence Bundle 3; page 1411, paragraph 28.

- Market Capitalisation - between HK\$1,814 million and \$2,982 million;
- Average Daily Trading Turnover - HK\$8,070,187; and
- Average Daily Trading Volume - 4,215,782 shares.

Institutional investors

336. Of institutional investors, in light of that data, Mr. Leung said:³³²

“I believe that it should be unlikely for the shares of the Company to be included in the target investment pool for most of the institutional investors due to the typical minimum market capitalization and daily average turnover requirements of the fund managers ... although certain small cap and/or special situation funds, which focused on the trading of special events and/or short-term investment opportunities with a higher risk and liquidity tolerance, may trade/have an interest in trading the shares of Dan Form.”

337. Of those requirements of market capitalisation and daily average turnover, he said that the typical institutional investor required, “US\$1 billion market capitalization and US\$1 million daily average turnover.”³³³

Retail investors

338. Of retail investors, Mr. Leung said, “...especially those who were interested in trading small-to-mid cap stocks with higher tolerance in volatility and liquidity would also trade/have an interest in trading Dan Form shares”.³³⁴

Not generally known

339. Of whether the four pieces of information, including the 8 September 2016 information, was generally known to potential investors in the Relevant Period, having had regard to Dan Form’s Announcements and media coverage, it was Mr. Leung’s opinion that it , “ ...was not generally known to the investing public/market, including the Potential Investors” before the Joint Announcement was published on 22 September 2016.³³⁵

“Likely to materially affect”

340. Of whether, if generally known to potential investors, the 8 September information

³³² Expert Evidence Bundle 3; page 1411, paragraph 28.

³³³ Expert Evidence Bundle 3; page 1411, Footnote 1.

³³⁴ Expert Evidence Bundle 3; page 1411, paragraph 28.

³³⁵ Expert Evidence Bundle 3; page 1412, paragraph 34.

would have been likely to materially affect the price of Dan Form shares, Mr. Leung expressed the opinion:³³⁶

“Given the advanced stage of the negotiation, the matching of the bid/offer price range between the relevant parties and the potential purchaser’s strong commitment to bring the negotiation to fruition, I believe that some of the Potential Investors would have been likely to buy/refrain from selling Dan Form shares in order to capture the potential gains had the information of the New Formulation been generally known to them at the time.”

Other factors

341. Of factors, other than a proposed price range of HK\$2.7 to HK\$2.75, that in his opinion potential investors would have considered if in possession of the 8 September 2016 information, Mr. Leung said, “... I believe that the potential investors would have typically taken a number of other factors”, namely:³³⁷

- risks in relation to the possible failure of the transaction;
- the deal completion timetable and the present value of the potential gains; and
- the potential value accretion, if any, to be brought by the transaction etc,

into consideration to assess the expected new fair value/potential price upside of Dan Form shares.

However, for the reasons that he articulated, in particular the advanced stage of negotiations, so that a tight completion timetable could reasonably be anticipated, in his opinion the impact of other factors would have been minor.

Quantifying the likely material affect

342. In quantifying the likely material effect on potential investors, Mr. Leung considered retail and institutional investors separately.

Retail investors

343. In his opinion. “...retail investors would have likely required a simple 5% to 10%

³³⁶ Expert Evidence Bundle 3; page 1413, paragraph 39.

³³⁷ Expert Evidence Bundle 3; pages 1413-1414, paragraph 40 and Footnote 2.

discount to the Proposed Offer Price of \$2.7 to \$2.75, i.e. \$2.43 to \$2.61.”³³⁸

Institutional investors

344. Of institutional investors, he said that it was likely that they would adopt “qualitative judgment and quantitative methods”. Of that, he said:³³⁹

“... one of the common methodologies was to assess the new fair value of the Company’s shares under a binary scenario, i.e. the failure of the negotiation with the Company’s share price falling to the recent (e.g. three months) low (in this case the intraday low of \$1.46 on 13 and 23 June 2016) and the successful completion of the deal at the Proposed Offer Price.”

345. Of the next step, he said:³⁴⁰

“The values of the two binary outcomes were weighted according to the probability assumed by the institutional investors and the sum of the probability-weighted value would have been the assessed new fair value adopted by the institutional investors.”

Probability of failure of the negotiations

346. Of the probability of failure of the negotiations in the New Formulation, he said that in his opinion it would be reasonable “... to adopt a 25% probability to the scenario of the potential failure.”³⁴¹

New fair value

347. In consequence, he calculated that the assessed new fair value of the institutional investors would have been between HK\$2.39 and 2.43 per Dan Form share.

348. In those circumstances, it was Mr. Leung’s opinion that:³⁴²

“... the Potential Investors would have bought/refrained from selling Dan Form shares up to the range between \$2.39 (i.e. the low-end of the range of the institutional investors) and \$2.61 (i.e. the high-end of the range of the retail investors).”

³³⁸ Expert Evidence Bundle 3; page 1414, paragraph 41.

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

³⁴² Expert Evidence Bundle 3; page 1414, paragraph 42.

He noted that was 13.8% and 24.4% higher respectively than the closing price of HK\$2.10 per Dan Form shares on 8 September 2016.

Dan Form closing share price: average daily percentage change

349. Mr. Leung said that he calculated the average daily percentage change of the closing price of Dan Form shares, from 1 June 2016 to 22 September 2016, on the basis of the average of the daily percentage change of the closing price of Dan Form shares, “...regardless of whether it was positive or negative change in price”³⁴³. Of that, he noted that:³⁴⁴

“The potential share price upside percentage represent 5.1 times (x) to 8.9x the average daily percentage closing change of 2.7%”.

Materiality

350. In cross-examination, Mr. Leung responded to the question of what represented a “material change”, by saying that in his opinion: “... two times of the average would be significant. Usually, according to my experience, investor would most likely react to such change”.³⁴⁵

351. Mr. Leung explained that whilst he had used an analysis of standard deviation to measure materiality in his draft report, for his finalised report he had deleted that material and replaced it with an analysis of the anticipated impact in relation to the average daily percentage change in the closing price.³⁴⁶ He had done so because the “average price change of a certain period is easy to understand by the tribunal. And secondly, this is also very commonly used method... and serves the purpose.”³⁴⁷

Opinion

352. In the result, Mr. Leung expressed the opinion that, “...the information involved in the New Formulation would have been likely to materially affect the price of Dan Form.”³⁴⁸

³⁴³ Expert Evidence Bundle 3; page 1415, Footnote 4.

³⁴⁴ Expert Evidence Bundle 3; pages 1414-1415, paragraph 42.

³⁴⁵ Transcript; 6 January 2025, page 78.

³⁴⁶ Transcript; 6 January 2025, pages 63-64.

³⁴⁷ Transcript; 6 January 2025, page 64.

³⁴⁸ Expert Evidence Bundle 3; page 1415, paragraph 42.

The other information said to be known to Mdm. Cynthia Chen

353. The Commission asserted that:³⁴⁹

- in respect of the ‘11 September 2016 Information’, that Mdm. Cynthia Chen knew, in addition to the earlier asserted information that, “... Dai expected that the potential purchaser for the Sale Shares would visit Dan Form to begin due diligence on the following day, i.e. 12 September 2016”;
- in respect of the ‘12 September 2016 Information’, that “... Dai informed Cynthia Chen that the relevant parties would proceed with the Proposed Acquisition”;
- in respect of the ‘19 September 2016 Information’, that, in addition to the earlier stipulated information, Mdm. Cynthia Chen knew that, “... there was an all-party meeting to finalize the terms of a draft sale and purchase agreement”.

Opinion

354. For the reasons that he stipulated in his report³⁵⁰ and confirmed in his oral evidence, it was Mr. Leung’s opinion that the 11 September 2016 information, the 12 September 2016 information and the 19 September 2016 information would each have had an impact likely to materially affect the price of Dan Form shares.

A consideration of the submissions

355. In broad terms, we accept the validity of Mr. Leung’s analysis and opinions, in particular in respect of the likely material effect on the price of Dan Form shares, if the New Formulation of the 8 September 2016 information he considered was known to those who traded in or would be likely to trade in Dan Form shares.

356. In one respect, that New Formulation was incomplete in asserting only that on 6 September 2016, Mr. Dai was asked to accept the offer of a lower price, namely HK\$2.7. That statement was incomplete, because within hours it was made clear in terms that the former stipulated price of HK\$2.75 was acceptable. That much was made clear in WhatsApp messages to Mdm. Cynthia Chen, sent on and between 18:41 and 19:13 on 6 September 2016, by Mr. Brian Liu. Mr. Leung was not provided with that information at the time he made his written report, dated 3 October 2023. The price of HK\$2.75 was the price that Mr. Dai had accepted at

³⁴⁹ Expert Evidence Bundle 1; page 6, paragraphs 24-26.

³⁵⁰ Expert Evidence Bundle 3; pages 1415-1417, paragraphs 43-53.

the meeting on 2 September 2016, as noted in Mr. Brian Liu's email to Mr. Kin Chan at 10:39 on 3 September 2016. Accordingly, we are satisfied that it was not relevant to consider the effect on the share price of the articulation of the short-lived offer of HK\$2.7.

357. Ms. Tse's criticism of Mr. Leung's report on the basis that he, "...had failed to take into account factual issues that were relevant"³⁵¹ in relation to the 8 September 2016 information, in particular the matters then itemised at paragraphs 63(1)(i) to (vii) of her Closing Written Submissions, is misplaced. Findings arising from the evidence, in particular oral evidence, is a matter entirely for the Tribunal.

Conclusion

358. Earlier, we made detailed findings as to which evidence we rejected and which we accepted, in particular in respect of Mdm. Cynthia Chen's knowledge of the information contained in WhatsApp messages, emails, discussions at meetings and discussions with Mr. Dai. In the context of those findings, we are satisfied that on 8 September 2016 Mdm. Cynthia Chen was in possession of inside information and knew that to be the case.

359. Although Mr. Leung considered the significance of the information asserted by the Commission was possessed by Mdm. Cynthia Chen on dates subsequent to 8 September 2016, namely 11 September 2016; 12 September 2016 and 19 September 2016, with respect, we do not consider it necessary to analyse that information in any detail. Suffice it to say that the inside information possessed of by Mdm. Cynthia Chen on 8 September 2016 subsisted and was merely enhanced or substantiated by her knowledge of subsequent events until the Joint Announcement on 22 September 2016.

2 September 2016

360. We have found that Mdm. Cynthia Chen read and was aware of the contents of the Proposal Letter, sent to her by email at 12:47 on 2 September 2016. Further, we found that she was aware of the discussions between Mr. Dai and Mr. Brian Liu at the subsequent meeting, in particular that Mr. Dai agreed to the offer price of HK\$2.75 per share. Conversely, she was aware that there were outstanding issues to be resolved, namely: Mr. Dai's insistence on a binding agreement, subject to an adjustment mechanism of assets and liabilities based on financials as at 30 June 2016.

³⁵¹ Closing Submissions of the 1st Specified Person, paragraph 63.

361. We accept Mr. Leung's evidence that the fact that the difference between the parties as to the provision of a binding agreement was outstanding on 2 September 2016 did not render the agreement on the price of HK\$2.75 per share not specific information. As we have said, we do not regard the bizarre, apparently half-hearted attempt by WhatsApp messages, sent to Mdm. Cynthia Chen on 6 September 2016, to secure a lesser price of HK\$2.70 from which Mr. Brian Liu resiled within hours, as relevant to what had been agreed, namely HK\$2.75 per share.

The question that arises is: if that information, known to Mdm. Cynthia Chen on 2 September 2016 was known to those who traded in or were likely to trade in Dan Form shares, would it likely materially affect the price of those shares?

362. In his written report and in his oral evidence, as requested by the Commission, Mr. Leung only addressed the question of the likely material effect on the price of Dan Form shares having regard to the omnibus body of evidence up to and including 8 September 2016. He did not address the rhetorical question posed above.

363. The adjustment mechanism suggested by Mr. Dai, namely based on the 30 June 2016 financial results was of little or no controversy. They were used as the basis of the Profit Warning Announcement by Dan Form, dated 19 August 2016, and were to be used as the basis of the soon-to-be announced Interim Results. No doubt it could be anticipated that they were accurate. The lack of likely controversy over the financials was reflected in the relatively short period of due diligence agreed between the parties.

364. The significance of the issue of Mr. Dai's insistence on a binding agreement is to be considered in the context of the steps taken by ASM to secure the opportunity to have meetings with Mr. Dai, in particular the fact that Mr. Brian Liu had returned from Jakarta to take part in the meeting of 2 September 2016. That signalled a desire to conclude the deal.

Conclusion

365. In all those circumstances, we are satisfied that information of the agreement of an offer price of HK\$2.75 per share, known to Mdm. Cynthia Chen, reached by Mr. Dai and Mr. Brian Liu on 2 September 2016, was information, if known to those who traded in or were likely to trade in Dan Form shares, would likely materially affect the price of those shares. In reaching that determination, we are satisfied that the analysis of Mr. Leung in respect of the 8 September information is apposite and applicable to 2 September 2016. It is to be noted that the closing

price of Dan Form shares on 2 September 2016 was HK\$1.72.³⁵²

³⁵² Core Bundle 1, page 5.

CHAPTER 10

WEN LIDE: TRADING IN SHENWAN

Mr. Wen: denial of trading in Dan Form shares in 2016

366. When contacted by telephone by Mr. Edmond Tsui, an officer of the Commission, on 20 September 2019, and advised that the Commission had information that he had traded in Dan Form shares in August and September 2016, so that he might know of matters relevant to the Commission's investigation, Mr. Wen Lide said that he did not trade 271 in 2016 and did not know anything about the stock. He declined the request that he attend an interview.³⁵³ Dan Form's Stock Code on the SEHK was 271. As we found earlier, that was, "a barefaced, brazen lie."

Shenwan Hongyuan Securities

367. Mr. Wen Lide held a securities account with Shenwan Hongyuan Securities (H.K.) Limited ("Shenwan") at which, at the material time, Mdm. Lucy Tsui Hung was his account executive or "broker" as Mdm. Cynthia Chen described her. In its previous iteration, Shenwan was Shenyin & Wanguo Securities (Hong Kong) Co., Limited (Shenguo). On 16 August 2002, Mr. Wen had opened a securities account and a margin financing account at Shenguo.³⁵⁴ In the account opening form, his residential address was described as being Room 1502, No. 32, Lane 100, Zhong Tan Road, Shanghai, PRC 200061 and his contact telephone number as being 1360 170 1818. His 'Settlement Bank' was stipulated to be HSBC, account number 500 889118 833. He had provided a copy of his passport, in which he was described as being a manager and a married man, having been born on 14 August 1962 in Shanghai.³⁵⁵ Shenwan account statements for Mr. Wen Lide on and between 1 January 2016 and 30 November 2016 described activity in his account over that period.³⁵⁶

Dealings between Mr. Wen and Mdm. Lucy Tsui

368. As his account executive, Mdm. Lucy Tsui received telephone instructions from Mr. Wen for his purchases and sales of Dan Form shares in the period on and between 29 June 2016 and 19 September 2016. Audio recordings were made of those telephone conversations and a

³⁵³ Witness Evidence Bundle 20; page 12548, paragraph 36.

³⁵⁴ Witness Evidence Bundle 18A, pages 10758-10793.

³⁵⁵ Witness Evidence Bundle 18A, page 10793.

³⁵⁶ Witness Evidence Bundle 18A, pages 10798-10821.

transcript and English translation compiled.³⁵⁷ Mr. Wen's sale of Dan Form shares in the period on and between 29 September 2016 and 26 October 2016 were carried out either through "Internet" or "Mobile".³⁵⁸

27 July 2016

369. Mdm. Lucy Tsui confirmed that she and Mr. Wen had a conversation, which began at 11:32 on 27 July 2016, in which he placed an order to buy 50,000 Dan Form shares at HK\$1.95 per share.³⁵⁹ In the course of the conversation, Mr. Wen asked, "By the way, I wonder how I can transfer money to you now." Having explained that he had an HSBC account, he said, "I've got blank cheques at her older sister's hand. I'll give one to you... I have them signed... I have them spared (sic) in Hong Kong just in case."

370. In response to Mr. Wen's question, "Bank deposit didn't work last time, did it?", Mdm. Lucy Tsui said, "Well... no, now... another one has been opened for you now... I opened a new one for you. You needed it last time, so I opened it for you." Then, Mr. Wen said, "Then I'll contact her older sister and ask her to send the cheque to you, okay?" The conversation concluded with the following interchange: (F-female voice; M-male voice)

F: Alright, make sure she sends it today, otherwise I am afraid that I will not receive it...

M: Anyways, I don't think she takes them with her. I suppose she keeps them at home.

F: Okay, is it still Chen Hong?

M: Yes.

F: I'll contact her. Oh no, could you give her a heads-up?

M: I'll give her a heads-up.

F: You give her a heads-up, and I'll contact her.

M: Just tell her that Wen Lide has just called me and asked me to get a cheque from you.

F: I got it. Will do.

³⁵⁷ Bundle of Audio Recording Transcripts.

³⁵⁸ Witness Evidence Bundle 18A, page 10797.

³⁵⁹ Bundle of Audio Recording Transcripts, pages 13-16.

M: About 100,000 dollars. Withdraw it, withdraw it today.

F: Okay, no worries. Just give her a heads-up, and I will contact her and find an easier way to do it.”

Trading: 29 June 2016 (Order Date); 4 July 2016 (Settlement Date)

371. Of the reference to, “Bank deposit didn’t work last time”, it is to be noted that the previous purchase of Dan Form shares was for 160,000 shares on 29 June 2016 for a total of HK\$313,600, with a Settlement Date of 4 July 2016.³⁶⁰ On 4 July 2016, HK\$300,000 was deposited into Mr. Wen’s Shenwan account, unusually by a cheque drawn on the account of Mr. Simon Yuen with HSBC.³⁶¹ In turn, a matching transfer of HK\$300,000 was made from Mr. Wen’s HSBC account to Mr. Simon Yuen’s account.

372. In her evidence-in-chief, Mdm. Lucy Tsui said that from the transcript she understood the reference to older sister, to be to Chen Hong. She said that she understood that term to describe “not exactly a natural sister” but also not necessarily a lady older than Mr. Wen. It was simply a term of respect. Chen Hong was the name by which she had first known Mdm. Cynthia Chen.³⁶² Of the circumstances in which it was necessary to open a new account for a client with Shenwan’s bank, Standard Chartered, Mdm. Lucy Tsui said that if a client’s account was inactive for quite a while, the client’s account with the bank would be cancelled. Inactivity of about 6 to 12 months would result in cancellation.³⁶³

373. Mdm. Lucy Tsui described the mechanics of the system adopted by Shenwan to enable clients to make deposits into their accounts as being an account opened by Shenwan:³⁶⁴

“...with Standard Charter (sic), then for each and every customer they would have a subaccount number... each customer will have his own exclusive account number under our company”.

So, for deposits into Mr. Wen Lide’s account, the payee was described as “SWSHK-Wen Lide” and the related bank deposit payment slip stipulated his unique sub-account number.

³⁶⁰ Expert Evidence Bundle 5, page 1427-1.

³⁶¹ Expert Evidence Bundle 7, pages 1589-1592.

³⁶² Transcript; 7 January 2025, pages 51-54.

³⁶³ Transcript; 7 January 2025, page 25.

³⁶⁴ Transcript; 7 January 2025, pages 16-17.

HSBC

374. In 2016, Mr. Wen Lide held a current and a savings account at HSBC, account number 500 889118 833.³⁶⁵ There were no transactions in the account for the account statements dated on and between 19 March 2016 and 18 June 2016.³⁶⁶ Thereafter, beginning in late June 2016 there was a strong, positive correlation between the activity in the account and the trading in Dan Form shares.

Mr. Fordham's Evidence

375. In his report, dated 23 July 2021, Mr. Christopher Fordham set out his qualifications and experience. He began his career at an accountancy practice in 1990 in London. He is a Fellow of the Association of Chartered Certified Accountants; a Member of the Hong Kong Institute of Certified Public Accountants; a member of the Association of Certified Fraud Examiners; an Associate Member of the Academy of Experts in the United Kingdom; and a Member of the Insolvency Practitioners Association in the United Kingdom.³⁶⁷ He testified that he had given evidence in civil proceedings in the High Court in Hong Kong on several occasions.³⁶⁸ We accept his evidence as that of an expert witness.

376. He received instructions from the Commission, dated 2 February 2021.³⁶⁹ At that time he was the Managing Director at Alvarez and Marsal's Disputes and Investigations team in Hong Kong and Mainland China. Since then, he had returned to the United Kingdom where he was semi-retired. He had been asked to:³⁷⁰

- identify the source(s) of funding for each acquisition of Dan Form shares through Mr. Wen's 'SWHY Account', i.e. his Shenwan account, in and between June 2016 and October 2016;
- identify the whereabouts of the Sales Proceeds³⁷¹ in and between June 2016 and October 2016.

³⁶⁵ Exhibits Bundle 2, pages 1169-1196.

³⁶⁶ Exhibits Bundle 2, pages 1185-1192.

³⁶⁷ Expert Evidence Bundle 7, pages 1435-1653.

³⁶⁸ Transcript; 13 December 2024, page 6.

³⁶⁹ Expert Evidence Bundle 5, pages 1422-1426.

³⁷⁰ Expert Evidence Bundle 7; pages 1443-1445, paragraph 1.3.1.

³⁷¹ Expert Evidence Bundle 7, page 1440:

"The amount of sales proceeds from dealings in Dan Form Shares that were withdrawn from Wen's SWHY Account and deposited into the HKD savings account under Wen's HSBC Account, totalling HK \$6,787,961.40."

Also, he said that he had been asked to calculate:

- the amount of the Sales Proceeds transferred to Mr. Lam Wai Ho's account ("Lam's Funds") and the whereabouts of the remaining Sales Proceeds (Layer One; Section 3 of his report);
- the amount of Lam's Funds transferred to Mr. Chim's HSB account ("Chim's Funds") and the whereabouts of the remaining Lam's Funds (Layer Two; Section 4 of his report);
- the amount of Chim's Funds transferred from Mr. Chim's HSB account to the Joint Account ("Joint Funds") of Mdm. Cynthia Chen and Mr. Chim and the whereabouts of the remaining Chim's Funds (Layer Three; Section 5 of his report);
- the amount of Joint Funds transferred to Mdm. Cynthia Chen's HSB account ("Chen's Funds") and the whereabouts of the remaining Joint Funds (Layer Four; Section 6 of his report);
- the whereabouts of Chen's Funds (Layer Five; Section 7 of his report).

Transactions in Mr. Wen's Shenwan account: 1 January 2016 - 31 October 2016

(i) 1 January 2016 - 31 May 2016

377. In the period, 1 January 2016 to 31 May 2016, there were no transaction in the Shenwan account. Throughout that period, the account had a cash balance of HK\$583.46 and held 80,000 shares of the DeTai New Energy Group Limited, Stock Code 559.

(ii) 1 June 2016 - 31 October 2016

378. Then, beginning on 29 June 2016 Dan Form shares were bought and monies paid into the account. In his report, Mr. Fordham described the buying and selling of Dan Form shares from that date up and until 26 October 2016 in Appendix 3.³⁷² He noted that on 31 October 2016 the only shares held in the account were the 80,000 shares of DeTai New Energy Group Limited and there was a cash balance of HK\$2.33.

379. Mr. Fordham described the trading that had taken place as being divided into two Batches.

³⁷² Expert Evidence Bundle 7, pages 1502-1503. Appendix 3 is at Appendix V of this report.

(i) 29 June 2016 to 18 August 2016: Batch One

380. In Batch One, a total of 210,000 Dan Form shares were purchased, on 29 June 2016 (160,000) and 27 July 2016 (50,000), all of which shares were sold on 18 August 2016, at a net loss of HK\$6,645.70.

(ii) 24 August 2016 to 26 October 2016: Batch Two

381. In Batch Two, 3,120,000 Dan Form shares were bought in the account on and between 24 August 2016 and 19 September 2016 all of which shares were sold in the period on and between 29 September 2016 and 26 October 2016. After taking into account HK\$50,924.89 of commissions and charges, the net profit of Batch Two was HK\$2,657,694.71. The net profit of Batch One and Batch Two was HK\$2,651,049.01.³⁷³

382. The Dan Form shares had been bought at what was generally an increasing range of price, beginning at HK\$1.65 per share on 24 August 2016 and concluding at HK\$2.34 per share on 19 September 2016. The shares were sold in five tranches, at a High of HK\$2.73 per share and a Low of HK\$2.69 per share over the period between 29 September 2016 and 26 October 2016.

Deposit of monies into Mr. Wen's Shenwan account: 1 June 2016 - 31 October 2016

383. Mr. Fordham noted that in the period 1 June 2016 to 31 October 2016 ("Review Period"), there were eight deposits, to a total of HK\$4,146,000, paid into Mr. Wen's Shenwan account.³⁷⁴

Provenance of the deposits

384. Of the provenance of those funds, Mr. Fordham noted that:

- five deposits were by cheques drawn on account of Mr. Wen with HSBC on and between 28 July 2016 and 12 September 2016;³⁷⁵
- a total of two deposits were made up of one cheque drawn on each of the accounts of:

³⁷³ Expert Evidence Bundle 7; pages 1448-1449, paragraph 2.2.

³⁷⁴ Expert Evidence Bundle 7; page 1449, paragraph 2.3.4.

³⁷⁵ Expert Evidence Bundle 7; page 1451, paragraph 2.4.2.

- Mr. Lam Wai Ho, dated 24 August 2016, for HK\$144,217³⁷⁶;
- Mdm. Cynthia Chen, dated 24 August 2016, for HK\$49,541³⁷⁷; and
- a transfer was made on 4 July 2016 of HK\$300,000 from the account of Mr. Simon Yuen Wing Man.³⁷⁸

Source of funds	Transaction date/ period	No. of txn	Type of transaction	Amount HK\$	Paragraph ref in Mr. Fordham's report
Wen	28 Jul 2016 to 12 Sep 2016	5	Cheque	3,652,242.00	2.4.2 to 2.4.4
Yuen Wing Man Simon	4 Jul 2016	1	Transfer	300,000.00	2.4.5 to 2.4.7
Lam	24 Aug 2016	1	Cheque	144,217.00	2.4.8
Chen	24 Aug 2016	1	Cheque	49,541.00	2.4.9
Total funds deposited to Wen's SWHY Account				4,146,000.00	

Mr. Yuen Wing Man, Simon - 4 July 2016: \$300,000 transfer

385. The transfer of HK\$300,000 from Mr. Simon Yuen's savings account to Mr. Wen Lide's Shenwan account at 15:58 on 4 July 2016 was matched by a transfer of an identical sum of money from Mr. Wen Lide's HSBC account to another savings account of Mr. Simon Yuen at HSBC on 4 July 2016. Of those circumstances, Mr. Fordham said it is possible therefore that the funds transferred to Mr. Wen "may actually have been provided by Wen."³⁷⁹

386. Having noted that the aggregated account balances in Mr. Wen's HSBC account prior to 29 June 2016 were HK\$1,828.28; €0.03 and US\$0.02, Mr. Fordham said that the ultimate source of the HK\$300,000 that was paid to Mr. Wen's Shenwan account on 4 July 2016 may have included two ATM transfers by Mr. Chim of HK\$50,000 on each of 3 and 4 July 2016 to Mr. Wen's HSBC savings account.³⁸⁰

Five cheques from Wen's HSBC account deposited into his Shenwan account

387. The five cheques, drawn on the current account of Mr. Wen with HSBC, deposited into Mr. Wen's account with Shenwan on and between 28 July 2016 and 12 September 2016,

³⁷⁶ Witness Evidence Bundle 17, page 10325. Expert Evidence Bundle 7; page 1455, paragraph 2.4.8.

³⁷⁷ Witness Evidence Bundle 2, page 736. Expert Evidence Bundle 7; page 1455, paragraph 2.4.9.

³⁷⁸ Expert Evidence Bundle 7; pages 1453-1454, paragraph 2.4.5.

³⁷⁹ Expert Evidence Bundle 7; pages 1453-1454, paragraph 2.4.5.

³⁸⁰ Expert Evidence Bundle 7; pages 1454-1455, paragraphs 2.4.6-2.4.7. Exhibit N; Expert Evidence Bundle 7, pages 1611-1613 at #420 and #905.

were:³⁸¹

Cheque number	Cheque Date	Cheque clearance date	Amount HK\$
773663	28 Jul 2016	28 Jul 2016	100,000.00
773661	24 Aug 2016	24 Aug 2016	1,956,242.00
125636	5 Sep 2016	5 Sep 2016	534,000.00
125638	5 Sep 2016	7 Sep 2016	762,000.00
125637	8 Sep 2016	12 Sep 2016	300,000.00
			3,652,242.00

Deposits into the savings account of Mr. Wen at HSBC on and between 28 July 2016 and 10 September 2016

388. Mr. Fordham noted that there were 27 deposits, to a total of HK\$3,652,242, made into Mr. Wen's savings account at HSBC on and between 28 July 2016 and 10 September 2016. Twenty-four of those deposits were made in cash, to a total of HK\$1,696,000. He summarised those deposits as being:

Payers	Account number	Date of deposits	Amount HK\$
Cash deposits from unidentified payer(s)	Not applicable	28 Jul 2016 to 10 Sep 2016	1,696,000.00
Opulent Pretty Travel Limited	471650889	23 Aug 2016	999,985.00
Opulent Pretty Travel Limited	788366300883	23 Aug 2016	491,681.00
Choi Yuk Chor	636-290165-833	23 Aug 2016	464,576.00
			3,652,242.00

389. Mr. Fordham described the details of those transfers in Appendix 4 of his report. A simplified version of Appendix 4 reflecting the observations made on those transactions is set out below.

Appendix 4 - List of 27 deposits paid into Wen's HSBC Account

HKD savings account under Wen's HSBC Account

Date	Transaction Details	Transaction time	Location	Deposit (HK\$)
28/07/2016	CASH DEPOSIT (28JUL16)	16:06	Lucky Plaza Express Banking, Sha Tin	50,000.00
28/07/2016	CASH DEPOSIT (28JUL16)	16:08	Lucky Plaza Express Banking, Sha Tin	50,000.00
23/08/2016	CREDIT AS ADVISED Choi Yuk Chor	14:24 ³⁸²	Not provided	464,576.00
23/08/2016	HK123086QFLLXXVK016 OPULENT PRETTY TRAVEL	14:54 ³⁸³	Online remittance ³⁸⁴	999,985.00

³⁸¹ Expert Evidence Bundle 7; page 1451, paragraph 2.4.2.

³⁸² Exhibits Bundle 5A, page 2564.

³⁸³ Stated to be authorized at 14:54 on 23 August 2016: Exhibits Bundle 7, pages 5473 and 5483.

³⁸⁴ Exhibits Bundle 7, page 5473.

Date	Transaction Details	Transaction time	Location	Deposit (HK\$)
23/08/2016	HK123086PVLLZKJE024 OPULENT PRETTY TRAVEL	15:03 ³⁸⁵	Online remittance ³⁸⁶	491,681.00
03/09/2016	CASH DEPOSIT	12:43	Shatin Plaza Branch	78,000.00
03/09/2016	CASH DEPOSIT	12:53	Shatin Plaza Branch	78,000.00
03/09/2016	CASH DEPOSIT (03SEP16)	13:36	Shatin Centre Shopping Arcade Branch	100,000.00
05/09/2016	CASH DEPOSIT	11:59	Shatin Plaza Branch	78,000.00
05/09/2016	CASH DEPOSIT (05SEP16)	12:03	Shatin Centre Shopping Arcade Branch	50,000.00
05/09/2016	CASH DEPOSIT (05SEP16)	12:04	Shatin Centre Shopping Arcade Branch	50,000.00
05/09/2016	CASH DEPOSIT (04SEP16)	16:38	Shatin Centre Shopping Arcade Branch	50,000.00
05/09/2016	CASH DEPOSIT (04SEP16) ³⁸⁷	16:40	Shatin Centre Shopping Arcade Branch	50,000.00
06/09/2016	CASH DEPOSIT	16:42	Telford Gardens Branch, Kowloon Bay	78,000.00
06/09/2016	CASH DEPOSIT (06SEP16)	16:48	Telford Gardens Branch, Kowloon Bay	100,000.00
07/09/2016	CASH DEPOSIT (07SEP16)	10:12	Shatin Centre Shopping Arcade Branch	100,000.00
07/09/2016	CASH DEPOSIT	10:23	Shatin Plaza Branch	78,000.00
07/09/2016	CASH DEPOSIT	10:24	Shatin Plaza Branch	78,000.00
07/09/2016	CASH DEPOSIT	10:32	Shatin Centre Shopping Arcade Branch	78,000.00
07/09/2016	CASH DEPOSIT	10:32	Shatin Centre Shopping Arcade Branch	78,000.00
07/09/2016	CASH DEPOSIT	10:53	Shatin Plaza Branch	88,000.00
07/09/2016	CASH DEPOSIT	11:08	Shatin Centre Shopping Arcade Branch	84,000.00
08/09/2016	CASH DEPOSIT (08SEP16)	14:15	Lucky Plaza Express Banking, Sha Tin	98,000.00
08/09/2016	CASH DEPOSIT (08SEP16)	14:18	Lucky Plaza Express Banking, Sha Tin	2,000.00
09/09/2016	CASH DEPOSIT (09SEP16)	14:58	Shatin Centre Shopping Arcade Branch	100,000.00
10/09/2016	CASH DEPOSIT (10SEP16)	13:40	Hong Kong Office, Central	97,000.00
10/09/2016	CASH DEPOSIT (10SEP16)	13:43	Hong Kong Office, Central	3,000.00
				<u>3,652,242.00</u>

Cash deposits into Mr. Wen's savings account at HSBC

390. Of the 24 cash deposits into Mr. Wen's savings account at HSBC, Mr. Fordham noted that some were deposited at cash deposit machines and others deposited at bank counters.³⁸⁸

(i) ATM cash machines

391. A total of HK\$900,000, by 14 cash deposits, were made via cash deposit machines: deposits on 28 July 2016 and on each of the 8 consecutive days on and between of 3 September 2016 and 10 September 2016. On each of those dates the maximum permissible deposit to one account via cash deposit machine of HK\$100,000 was made.

(ii) Bank counters

392. The remaining 10 cash deposits, to a total of HK\$796,000, were made at bank counters on 3 September 2016, 5 September 2016, 6 September 2016 and 7 September 2016. The individual cash deposits were of sums of HK\$78,000, HK\$84,000 or HK\$88,000 and were made on days when the maximum permitted cash deposit into one account at a cash deposit

³⁸⁵ Stated to be captured at 15:03 on 23 August 2016: Exhibits Bundle 7, page 4176.

³⁸⁶ Exhibits Bundle 7, pages 4176 and 5474.

³⁸⁷ Although the transaction date is 5 September 2016, two deposits apparently were made on 4 September 2016.

³⁸⁸ Expert Evidence Bundle 7; pages 1451-1453, paragraph 2.4.4 - Notes.

machine of HK\$100,000 had been reached.

Deposits: location and identity of depositor(s)

393. The identity of none of the depositor(s) was recorded. Mr. Fordham noted that on 28 July 2016 and on 3 September 2016 to 10 September 2016 the deposits, "...were completed within one hour and within proximate locations at either Shatin, Central or Kowloon Bay."³⁸⁹

Transfers from Mr. Wen's savings account to his current account at HSBC

394. Mr. Fordham noted that the monies deposited into the savings account were transferred subsequently to the current account of Mr. Wen at HSBC and used to fund the remittances to Mr. Wen's Shenwan account.³⁹⁰

Provenance of the funds used in Mr. Wen's HSBC account to draw five cheques to make payments to Mr. Wen's Shenwan account

395. Mr. Fordham noted that the provenance of the funds used to make payments to Mr. Wen's Shenwan account, by five cheques drawn on Mr. Wen's current account with HSBC, was the deposits into his savings account described above and could be grouped into deposits of monies that matched the amounts stipulated in an individual cheque.³⁹¹

- (i) 28 July 2016 cheque, in the sum of HK\$100,000, matched the total of two cash deposits on the same date;
- (ii) 24 August 2016 cheque, in the sum of HK\$1,956,242, matched the total of the two transfers from Opulent Pretty Travel Limited and one by Mr. Choi Yuk Chor made on 23 August 2016;
- (iii) 5 September 2016 cheque, in the sum of HK\$534,000, matched the total amount of the eight cash deposits made on and between 3 and 5 September 2016;
- (iv) 7 September 2016 cheque (7 September 2016 is the clearance date, but the cheque was dated 5 September 2016), in the sum of HK\$762,000, matched the total amount of the nine cash deposits made on 6 and 7 September 2016;
- (v) 12 September 2016 cheque (12 September 2016 is the clearance date, but the cheque was dated 8 September 2016), in the sum of HK\$300,000, matched the

³⁸⁹ *Ibid.*

³⁹⁰ Expert Evidence Bundle 7; page 1450, paragraph 2.4.4.

³⁹¹ Expert Evidence Bundle 7; pages 1452-1453, paragraph 2.4.4, Note (d).

total amount of the five cash deposits made between 8 September and 10 September 2016.

396. Mr. Fordham noted that, without the twenty-seven deposits into Mr. Wen's savings account, there were insufficient funds to make the cheque payments described above. The only other deposit into Mr. Wen's account in the period was the sum of HK\$249,945 from Jing Xiarong on 9 September 2016, which amount was remitted that day to Grand Investment (Securities) Limited. He determined that deposit to be irrelevant to this analysis.³⁹²

Mr. Chim's account in his record of interview

Provenance of the five cheques drawn on Mr. Wen's HSBC account

397. In his record of interview, Mr. Chim was taken in succession to copies of the five cheques drawn on Mr. Wen's account with HSBC, by which a total of HK\$3,652,242 was deposited into his account with Shenwan.³⁹³ Mr. Chim gave contradictory accounts of how he obtained those cheques from Mr. Wen, "...he mailed (the cheques) to us and then maybe (he) gave (them) to me... (he sent them) to me." He added, "Sometimes I went to the Mainland, so he mailed (the cheques) to me, right". However, when asked to confirm that Mr. Wen had mailed the cheques to him, he said, "(I) don't remember. I don't remember. I don't remember how (I) got (the cheques)".³⁹⁴

Dealing with the five cheques

(i) 28 July 2016 - HK\$100,000

398. At the outset, in respect of the cheque for HK\$100,000, dated 28 July 2016³⁹⁵, Mr. Chim said that he did not recognise the writing and did not remember depositing the cheque. He did not recognise his wife's writing there.³⁹⁶ Then, he said, "(I) sometimes helped him, that is, with transfers."³⁹⁷

(ii) 24 August 2016 - HK\$1,956,242

399. Next, he had no recollection of the cheque drawn in the sum of HK\$1,956,242, dated

³⁹² *Ibid.*

³⁹³ Witness Evidence Bundle 5; pages 2163-2205 counter #s 821-1109.

³⁹⁴ Witness Evidence Bundle 5; pages 2192-2194, counter #s 1019-1030.

³⁹⁵ Witness Evidence Bundle 5, page 2570.

³⁹⁶ Witness Evidence Bundle 5; pages 2163-2165, counter #s 821-832.

³⁹⁷ Witness Evidence Bundle 5; pages 2165-2166, counter # 834.

24 August 2016.³⁹⁸

(iii) 5 September 2016 - HK\$534,000

400. Of the cheque drawn in the sum of HK\$534,000, dated 5 September 2016,³⁹⁹ Mr. Chim said that he did not recognise the handwriting. It was not written by his wife. “(I’m) not sure, right.... I don’t think this seems to be one.”⁴⁰⁰ It was not his handwriting.⁴⁰¹ Then, he explained:

“...sometimes MAN Lai Tak would ask me to make some transfers for him.... I would make the deposits for him.”⁴⁰²

Of his wife’s involvement, he said “(I) don’t think she’s involved.”⁴⁰³

(iv) 5 September 2016 - HK\$762,000

401. Of the cheque drawn in the sum of HK\$762,000, dated 5 September 2016⁴⁰⁴, Mr. Chim said that he could not remember if he had helped him make the deposit of the cheque.⁴⁰⁵

(v) 8 September 2016 - HK\$300,000

402. Next, he did not remember the cheque drawn in the sum of HK\$300,000, dated 8 September 2016.⁴⁰⁶

Cash deposits

403. In face of the suggestion that the provenance of the funds to meet the cheques in the sums of HK\$534,000, HK\$762,000 and HK\$300,000 were cash deposits and, in response to the question of whether he was involved in those cash deposits, Mr. Chim said “No. No.”⁴⁰⁷ He repeatedly denied being involved.⁴⁰⁸

Photographs stored on Mr. Chim’s mobile phone

404. Subsequently in the record of interview Mr. Chim was taken to a series of copies of photographs of cheques and bank deposit slips taken from his own Samsung mobile phone.

³⁹⁸ Witness Evidence Bundle 5; pages 2167-2169, counter #s 845-864 and page 2571.

³⁹⁹ Witness Evidence Bundle 5, page 2574.

⁴⁰⁰ Witness Evidence Bundle 5; pages 2185-2186, counter #s 976-978.

⁴⁰¹ Witness Evidence Bundle 5; page 2190, counter #s1003-1004.

⁴⁰² Witness Evidence Bundle 5; page 2191, counter #s 1006-1010.

⁴⁰³ Witness Evidence Bundle 5; page 2195, counter # 1039.

⁴⁰⁴ Witness Evidence Bundle 5, page 2575.

⁴⁰⁵ Witness Evidence Bundle 5; page 2197, counter # 1047.

⁴⁰⁶ Witness Evidence Bundle 5; page 2199, counter #1061 and page 2576.

⁴⁰⁷ Witness Evidence Bundle 5; page 2202, counter # 1088.

⁴⁰⁸ Witness Evidence Bundle 5; pages 2203-2204, counter #s 1091-1098.

(i) 28 July 2016 - HK\$100,000

405. In response to being shown a photograph of the cheque, drawn on Mr. Wen Lide's HSBC account made out to the payee, 'SWSHK-Wen Lide' in the sum of HK\$100,000, dated 28 July 2016,⁴⁰⁹ Mr. Chim said:⁴¹⁰

"I made transfers for MAN Lai Tak... So if there is any information in the phone, with photos I have taken, it should be about me and MAN Lai Tak, about he asking me to make a transfer for him."

The obverse side of the cheque stated, "003 SCB Clearing 28/07/2016."⁴¹¹ The storage path of the photograph on the mobile phone referred to Camera, 15:29 on 28 July 2016.⁴¹²

Provenance of/dealing with the five cheques: Mr. Chim's new explanations

406. Now, he said that Mr. Wen, "...gave (it) to me in the Mainland". It bore Mr. Wen's signature, but was otherwise blank. The details on the cheque were written on the day it was deposited, when Mr. Wen "notified us". Of those details, he said, "MAN Lai Tak asked us to write so". The amount was written at Mr. Wen's request. He added, "(I) think (I) asked my wife to write this, if I remember correctly." He did not remember how that information was conveyed to him.⁴¹³ In response to being asked if he had deposited the HK\$100,000 first and then written the cheque, he said, "(I) have no idea at all about (the things) behind it."⁴¹⁴

28 July 2016: withdrawal of HK\$100,000 from Mr. Chim's HSBC account

407. It is to be noted that Hang Seng Bank records stated that at 15:52 on 28 July 2016 HK\$100,000 in cash was withdrawn from Mr. Chim's Hang Seng Bank account.⁴¹⁵ The bank withdrawal slip stated, "ID SEEN" and a manuscript entry asserted that address, telephone and email address had been checked.⁴¹⁶ Immediately before that withdrawal a transfer was made from the Joint Account of Mr. Chim and Mdm. Cynthia Chen at HSB of HK\$100,000. The balance before the transfer from the Joint Account and after the cash withdrawal was

⁴⁰⁹ Witness Evidence Bundle 5, page 2585.

⁴¹⁰ Witness Evidence Bundle 5; pages 2255-2256, counter #1462.

⁴¹¹ Witness Evidence Bundle 5, page 2570.

⁴¹² Witness Evidence Bundle 5, page 2586.

⁴¹³ Witness Evidence Bundle 5; pages 2256-2261, counter #s 1466-1502.

⁴¹⁴ Witness Evidence Bundle 5; page 2262, counter #1508.

⁴¹⁵ Witness Evidence Bundle 5, page 2373.

⁴¹⁶ Exhibits Bundle 7, page 3727.

HK\$751.44.⁴¹⁷

Deposit of a total of HK\$100,000 into Mr. Wen's HSBC account

408. As Mr. Fordham noted, two deposits of cash of HK\$50,000 were made to Mr. Wen's HSBC savings account at 16:06 and 16:08 on 28 July 2016 at Lucky Plaza Express Banking, Shatin. In all the circumstances, we are satisfied that those were deposits made by Mr. Chim.

Mr. Wen's Shenwan account

409. Mr. Wen's Shenwan statement of account stated that 50,000 Dan Form shares had been bought for HK\$97,851.26 on 27 July 2016 with a Settlement Date of 29 July 2016, which resulted in a negative balance of (HK\$111,996.22). The credit of HK\$100,000 into Shenwan's Standard Chartered Bank account for the credit of the account of Mr. Wen Lide on 29 July 2016 reduced the negative balance commensurately.⁴¹⁸

Provenance of the monies

410. The transfer of HK\$100,000 from the Joint Account was itself very substantially funded from a transfer on 5 July 2016 of HK\$156,737 to the Joint Account from Mdm. Cynthia Chen's account at HSB.⁴¹⁹ In turn, the transfer on 30 June 2016 of HK\$264,421.05 to Mdm. Cynthia Chen's HSB account from Shenwan very substantially funded the transfer of HK\$156,737 on 5 July 2016 to the Joint Account, as it did the transfer of HK\$100,000 to Mr. Chim's account, described in the bank statement as on 4 July 2016⁴²⁰, which was further transferred to Mr. Wen's HSBC savings account as described in paragraph 385.

Mdm. Cynthia Chen's Shenwan account

411. On 28 June 2016, all the shares held in Mdm. Cynthia Chen's Shenwan account were sold for HK\$259,898.53, resulting in an account balance of HK\$264,545.59 on the settlement date of 30 June 2016. On the same day, Mdm. Cynthia Chen transferred HK\$264,436.05 out of the account balance of HK\$264,545.59 to her HSB bank account.⁴²¹ The HSB account statement of Mdm. Cynthia Chen states that HK\$264,421.05 was received on 30 June 2016.⁴²²

⁴¹⁷ Exhibits Bundle 7, page 3690.

⁴¹⁸ Witness Evidence Bundle 5, page 2373.

⁴¹⁹ Exhibits Bundle 11, page 6547-5.

⁴²⁰ Witness Evidence Bundle 5, page 2407.

⁴²¹ Exhibits Bundle 10A, page 5771. The records provided by HSBC suggest that the value date for this transaction is 3 July 2016: Exhibits Bundle 7, page 3789.

⁴²² Exhibits Bundle 5A, pages 2331-2332.

⁴²³ Exhibits Bundle 7, page 3696.

In her first record of interview, Mdm. Cynthia Chen acknowledged the sale of those shares, saying that the proceeds had been transferred to her current account with Hang Seng Bank. She added that it was necessary to check if the money had been transferred to the Joint Account with Mr. Chim, "... [b]ecause sometimes he needed money as the working capital for business operation".⁴²³

Conclusion

412. It is clear that a very substantial part of the monies used to settle the purchase of 50,000 Dan Form shares in Mr. Wen's Shenwan account on 27 July 2016 had its ultimate provenance in the proceeds of the sale of shares in Mdm. Cynthia Chen's Shenwan account on 28 June 2016.

3 and 4 July 2016-transfer of two amounts of HK\$50,000 from Mr. Chim's account to Mr. Wen's HSBC account

413. Mr. Chim's account statement describes the transfer of two amounts of HK\$50,000 by ATM, described in the bank statement as on 4 July 2016, totally HK\$100,000, to account number 500-889118-833.⁴²⁴ That is the account number of Mr. Wen Lide's account at HSBC. Mr. Wen's bank statement reflects the receipt of that money on 4 July 2016.⁴²⁵

(ii) 24 August 2016 - HK\$1,956,242

414. Of the copy of a photograph deposit slip evidencing a deposit at 11:25 on 24 August 2016 of a cheque in the sum of HK\$1,956,242,⁴²⁶ Mr. Chim said that this was also a case, "...where he asked me to make the deposit for him."⁴²⁷ He did not remember if he had sent a WeChat message to Mr. Wen after making the deposit. He said that he probably got the deposit slip, "after the deposit". Mr. Chim confirmed that he had made the deposit having asked his wife to write the details on the cheque.⁴²⁸ The storage path of the photograph on the mobile phone referred to WeChat, 11:26 on 24 August 2016.⁴²⁹

⁴²³ Witness Evidence Bundle 1; pages 453-455, counter #s 1156-1171.

⁴²⁴ Witness Evidence Bundle 5, page 2373.

⁴²⁵ Expert Evidence Bundle 5, pages 1427-15.

⁴²⁶ Witness Evidence Bundle 5, page 2591.

⁴²⁷ Witness Evidence Bundle 5; page 2264, counter # 1524.

⁴²⁸ Witness Evidence Bundle 5; pages 2265-2267, counter #s 1527-1543.

⁴²⁹ Witness Evidence Bundle 5, page 2592.

(iii) 24 August 2016 - HK\$49,541: Mdm. Cynthia Chen's cheque for Mr. Wen

415. In the same copy of a photograph from Mr. Chim's mobile telephone was a copy of a Standard Chartered deposit slip, dated 11:23 on 24 August 2016, of Mdm. Cynthia Chen's cheque in the sum of HK\$49,541.

(iv) 5 September 2016 - HK\$534,000

416. Of the copy of the photograph of the Standard Chartered deposit slip, dated 12:22 on 5 September 2016, in the sum of HK\$534,000,⁴³⁰ the storage path of which photograph on the mobile phone referred to WeChat, 12:23 on 5 September 2016,⁴³¹ Mr. Chim confirmed that he had deposited the cheque in the same way as the other cheques as requested by Mr. Wen. He added,⁴³²

“...he gave a pile (of cheques) to me, right.”

Mr. Wen asked Mr. Chim to help him because he could not go to Hong Kong himself.⁴³³

(v) 5 September 2016 (12:03 and 12:04) - two HSBC Advice slips of deposits of HK\$50,000 in cash

417. Of the copies of the photographs of the two HSBC Customer Advice slips⁴³⁴ of the deposit of two sums of HK\$50,000 in cash, dated 12:03 and 12:04 on 5 September 2016, Mr. Chim said, “I’m not sure how he made the deposit after I made the deposit for him.”⁴³⁵ He confirmed, “(I) deposited cash for him, right.”⁴³⁶ The storage path of the photograph on the mobile phone referred to WeChat, 12:24 on 5 September 2016.⁴³⁷

418. In face of the suggestion that the total of HK\$100,000 deposited in cash was part of the monies on which the cheque for HK\$534,000 was drawn, Mr. Chim said, “(I) don’t remember. I didn’t deposit this for him.”⁴³⁸ Of where he had obtained the total of HK\$100,000 which he had deposited in cash, he said, “(I) really don’t remember.”⁴³⁹ He was unable to recall whether

⁴³⁰ Witness Evidence Bundle 5, page 2599.

⁴³¹ Witness Evidence Bundle 5, page 2600.

⁴³² Witness Evidence Bundle 5; page 2274, counter # 1596.

⁴³³ Witness Evidence Bundle 5; page 2275, counter # 1598.

⁴³⁴ Witness Evidence Bundle 5, page 2601.

⁴³⁵ Witness Evidence Bundle 5; page 2276, counter # 1612.

⁴³⁶ Witness Evidence Bundle 5; page 2277, counter # 1616.

⁴³⁷ Witness Evidence Bundle 5, page 2602.

⁴³⁸ Witness Evidence Bundle 5; page 2277, counter # 1618.

⁴³⁹ Witness Evidence Bundle 5; page 2278, counter # 1622.

any of the possibilities suggested to him explained the provenance of the money: if he had the money in cash at home; if he had withdrawn the cash from the bank; if he brought the cash from the Mainland; or, if Mr. Wen had given him the cash.⁴⁴⁰

(vi) 5 September 2016 (11:59)- HSBC Advice slip of deposit of HK\$78,000 in cash

419. Of the copy of the photograph of an HSBC transaction advice of a deposit in cash in the sum of HK\$78,000, dated 11:59 on 5 September 2016⁴⁴¹, Mr. Chim said that he did not remember the transaction.⁴⁴² The storage path of the photograph on the mobile phone referred to WeChat, 12:24 on 5 September 2016.⁴⁴³ In response to the question of whether or not he had sent the photograph by WeChat to Mr. Wen, he said “I don’t remember. (I) really don’t remember.” Similarly, he said he didn’t remember where the fund had come from.⁴⁴⁴

420. In summary, the photographs on Mr. Chim’s mobile telephone, together with bank statements and related supporting documents, evidence a connection between Mr. Chim and Mr. Wen’s HSBC and Shenwan accounts in respect of bank transfers, cash and cheque deposits to a total of HK\$2,739,783.

Table A. Bank transfers from Mr. Chim’s bank account to Mr. Wen’s HSBC account.

Date	HK\$	Source
4-Jul-16	100,000.00	Two bank transfers from Mr. Chim’s account to Mr. Wen’s HSBC account of HK\$50,000 with a date of 4 July 2016 in the bank statements. `

Table B. Cash and cheque deposits to Mr. Wen’s Shenwan account recorded in Mr. Chim’s mobile telephone.

Date	HK\$	Source- Photograph (with storage path described as being WeChat)
28-Jul-16	100,000.00	Cheque # 773663 for HK\$100,000 drawn on Mr. Wen’s HSBC account deposited into Mr. Wen’s Shenwan account.

⁴⁴⁰ Witness Evidence Bundle 5; pages 2277-2282, counter #s 1616-1646.

⁴⁴¹ Witness Evidence Bundle 5, page 2603.

⁴⁴² Witness Evidence Bundle 5; page 2283, counter # 1654.

⁴⁴³ Witness Evidence Bundle 5, page 2604.

⁴⁴⁴ Witness Evidence Bundle 5; page 2284, counter #s 1655-1660.

Date	HK\$	Source- Photograph (with storage path described as being WeChat)
24-Aug-16	1,956,242.00	Cheque for HK\$1,956,242 drawn on Mr. Wen's HSBC account deposited into Mr. Wen's Shenwan account.
24-Aug-16	49,541.00	Cheque for HK\$49,541 drawn on Mdm. Cynthia Chen's HSB account deposited into Mr. Wen's Shenwan account.
5-Sept-16	534,000.00	Cheque for HK\$534,000 drawn on Mr. Wen's HSBC account deposited into to Mr. Wen's Shenwan account.
5-Sept-16	100,000.00	Two cash deposit Advices of HK\$50,000 each deposited into Mr. Wen's HSBC account (<i>part of the HK\$534,000 deposit above</i>).
5-Sept-16	78,000.00	A Cash Deposit Transaction Advice for HK\$78,000 deposited into Mr. Wen's HSBC account (<i>part of the HK\$534,000 deposit above</i>).
Tables A and B: TOTAL	2,739,783.00	

Mr. Lam Wai Ho

421. For his part, in a record of interview conducted of him by the Commission on 27 September 2018, Mr. Lam said that he had known Mr. Wen Lide “for years.”⁴⁴⁵ He had met him at the same birthday party as he had met Mdm. Cynthia Chen.⁴⁴⁶ Although he could not confirm it, he thought he had met her husband, a Wilson or Winson Chim.⁴⁴⁷

24 August 2016: Mr. Lam's cheque for HK\$144,217 for Mr. Wen

422. Of his payment by cheque to Mr. Wen Lide of HK\$144,217, debited to his account on 24 August 2016, Mr. Lam Wai Ho said that he had asked Mr. Wen, “... to buy stocks for me, he was an expert.... he said he could make money by investing in stocks.” He acknowledged that he transferred the money to Mr. Wen Lide on 24 August 2016. He did not know which stock he bought nor did he ask. When asked if the money had been returned to him in due

⁴⁴⁵ Witness Evidence Bundle 17; page 10140, counter # 906.

⁴⁴⁶ Witness Evidence Bundle 17; pages 10085-10086, counter #s 499-502.

⁴⁴⁷ Witness Evidence Bundle 17; pages 10080-10082, counter #s 457-474.

course, he said “probably not”, explaining, “[h]e just quietly disappeared”.⁴⁴⁸ When told that in fact the monies had been used by Mr. Wen Lide to buy Stock 271, Dan Form shares, Mr. Lam said, “I honestly didn’t know that.”⁴⁴⁹ He added that he didn’t get the money back.⁴⁵⁰

Mdm. Cynthia Chen

423. For her part, in her witness statement, Mdm. Cynthia Chen explained her payment by cheque, dated 24 August 2016, of HK\$49,541 to Mr. Wen’s Shenwan account as being:⁴⁵¹

“Winson’s payment to Wen in Hong Kong dollars for sums which Wen exchanged with Winson in the mainland China, and Wen directed Winson to deposit into the Shenwan Account.”

424. In her oral evidence-in-chief, she explained that:⁴⁵²

“... my husband came home and told me that when he was in mainland China, he asked Mr Wen for a cash of around 40,000 renminbi. It’s probably 42 or 43,000 renminbi, but I’m not sure about the exact amount. So, my husband told me that Mr Wen would not like to accept RMB, but Hong Kong dollar instead, and asked my husband to transfer Hong Kong dollar back to this account.”

425. In cross-examination, Mdm. Cynthia Chen acknowledged that, in her second record of interview by the Commission, during which she had been shown the cheque in the sum of HK\$49,541, after which she had said, “I don’t remember this... I don’t remember ... But I really don’t remember why I transferred the money to him”. She agreed that in the record of interview she had made no mention of a discussion with her husband.⁴⁵³ She explained, “So my husband asked me about that cheque, in fact, at that time I really could not recall.”

The payments by five cheques drawn on Mr. Wen’s HSBC account to his account with Shenwan to a total of HK\$3,652,242

426. In her witness statement, Mdm. Cynthia Chen described the circumstances in which payment was made by five cheques drawn on Mr. Wen’s HSBC account to his account with

⁴⁴⁸ Witness Evidence Bundle 17; pages 10134-10137, counter #s 848-878.

⁴⁴⁹ Witness Evidence Bundle 17; pages 10138-10139, counter # 892.

⁴⁵⁰ Witness Evidence Bundle 17; page 10141, counter #s 911-912.

⁴⁵¹ Core Bundle 2; page 181, paragraph 30.

⁴⁵² Transcript; 9 January 2025, page 59.

⁴⁵³ Transcript; 15 January 2025, pages 70-72.

Shenwan:⁴⁵⁴

“Wen had provided the signed cheques to Winson, for either Winson or I to physically deposit into the Shenwan Account in Hong Kong. This arrangement was made because Wen was for most of the time in mainland China and thus he requested us to help him run the errand.”

427. In her second record of interview when shown copies of the cheques, dated 28 July 2016 for HK\$100,000; 24 August 2016 for HK\$1,956,242 and 5 September 2016 for HK\$534,000 Mdm. Cynthia Chen said that she had written the cheques, not the signatures, and had done so at the request of her husband.⁴⁵⁵ However, when shown copies of the cheques, dated 5 September 2016 for HK\$762,000 and 8 September 2016 for HK\$300,000, she said repeatedly that she did not remember. In respect of the former cheque she said that although the handwriting, “...does look a bit like mine. I am not entirely sure whether it was mine.”⁴⁵⁶

428. In her oral evidence-in-chief, having been reminded of her second record of interview, Mdm. Cynthia Chen explained of her examination of the cheques during the interview:⁴⁵⁷

“... when I check on the cheques, one-by-one, some of the handwriting looks like my handwritings. So ... some of which do not. So that’s why ... in the later part of the interview, I actually explained that... I couldn’t recognise the specific cheques. I only remember I wrote cheques before, but I couldn’t recognise which one I did write. And furthermore, I usually will add two lines to cross the cheque, and so I’m not sure which one did I actually fill in the amount.”

429. In cross-examination, Mdm. Cynthia Chen was taken to the five cheques that were payable to “SWSHK-Wen Lide” and dated on and between 28 July 2016 and 8 September 2016.⁴⁵⁸ She agreed that she had written some of these cheques for Mr. Wen, “Let me say, very clearly, I helped my husband to put down the amount on the cheque for Mr. Wen.” She explained, that she filled in both English words and the numbers. Her husband handed her the cheque on each occasion.⁴⁵⁹

⁴⁵⁴ Core Bundle 2; page 180, paragraph 29.

⁴⁵⁵ Witness Evidence Bundle 3; pages 1390-1403, counter #s 1397-1492.

⁴⁵⁶ Witness Evidence Bundle 3; pages 1403-1408, counter #s 1493-1527.

⁴⁵⁷ Transcript; 9 January 2025, page 50.

⁴⁵⁸ Witness Evidence Bundle 4, pages 1750-1756.

⁴⁵⁹ Transcript; 15 January 2025, pages 73-77.

CHAPTER 11

DISBURSEMENT OF THE PROCEEDS OF THE SALE OF DAN FORM SHARES

(i) Batch One: 29 June 2016 - 18 August 2016

430. Mr. Fordham noted that the full amount of the proceeds generated by the sale of the Batch One shares were subsequently used to partially fund the acquisition of Dan Form shares in the Batch Two exercise.⁴⁶⁰

(ii) Batch Two: 24 August 2016 - 26 October 2016

431. The total proceeds of the sale of shares, before deducting commissions and charges, in Batch Two was HK\$8,419,180 for the sale of 3,120,000 Dan Form shares.⁴⁶¹

I. Transfers from Mr. Wen's Shenwan account to Mr. Wen's savings account with HSBC: 7 October 2016 - 31 October 2016

432. A total of HK\$6,787,961.40 was withdrawn from Mr. Wen's Shenwan account and transferred to Mr. Wen's savings account.

II. Transfers from savings to current account

433. A total of HK\$ 5,646,000 was transferred from Mr. Wen's savings account to his current account on numerous occasions.⁴⁶²

III. Disbursements from Mr. Wen's current account with HSBC

(i) Mr. Lam Wai Ho's Hang Seng Bank account: 3 cheques from Mr. Wen

434. Mr. Fordham noted that a total of HK\$4,346,000 was withdrawn from Mr. Wen's current account with HSBC by three cheques drawn in favour of Mr. Lam Wai Ho ("Lam's Funds"), two of which, in the amount of HK\$2 million, were dated 30 October 2016, and the third, in the amount of HK\$346,000, was dated 1 November 2016. He said that, without the inflow of funds from the sale proceeds of Dan Form shares, there would have been insufficient funds to permit those transfers of funds to Mr. Lam Wai Ho.⁴⁶³

⁴⁶⁰ Expert Evidence Bundle 7; page 1455, paragraph 2.5.1 (a).

⁴⁶¹ Expert Evidence Bundle 7; pages 1455-1456, paragraph 2.5.1 (b).

⁴⁶² Expert Evidence Bundle 7; page 1458, paragraph 3.2.2. Notes.

⁴⁶³ Expert Evidence Bundle 7; page 1459, paragraph 3.2.3. Note (a).

(ii) Mr. Wen Lijing

435. On 20 October 2016, HK\$1,300,000 was remitted by cheque with the payee described as ‘SWS-Wen Lijing’, possibly a payment to an account with Shenwan.⁴⁶⁴

(iii) Mr. Wen Lide and Mdm. Li Qian’s joint account

436. A total of HK\$395,300.46 was remitted to the joint account of Mr. Wen Lide and Mdm. Li Qian in five transfers on and between 11 October 2016 and 1 November 2016.⁴⁶⁵

(iv) Cash withdrawals - Mr. Wen Lide

437. HK\$315,000 was withdrawn by cash. A bank counter withdrawal of HK\$310,000 was made on 22 October 2016, in which the bank records indicate that Mr. Wen Lide withdrew the monies. On 20 October 2016, HK\$5,000 was withdrawn via an ATM, with HK\$20 in charges.⁴⁶⁶

(v) Grand Investment (Securities) Limited

438. A deposit of HK\$25,000 having been made into Mr. Wen’s HSBC account on 19 October 2016 through a cheque drawn on account of Grand Investment (Securities) Limited (subsequently renamed as Evergrande Securities (Hong Kong) Limited (“Evergrande Securities”)), a withdrawal of HK\$230,000 was made from Mr. Wen’s HSBC account on 1 November 2016 in favour of an account at Grand Investment (Securities) Limited, which was matched to the bank account details of Evergrande Securities.⁴⁶⁷

(vi) Mr. Simon Yuen

439. A transfer of HK\$200,000 was made from Mr. Wen’s HSBC account on 8 November 2016 to Mr. Simon Yuen’s account.⁴⁶⁸

Mr. Chim’s explanation of photographs on his mobile phone of cheques drawn on Wen’s HSBC account and deposit advices

(i) 30 October 2016 - HK\$2 million; payee Lam Wai Ho

440. In his record of interview Mr. Chim was shown copies of photographs from his mobile

⁴⁶⁴ Expert Evidence Bundle 7; page 1459, paragraph 3.2.3. Note (b).

⁴⁶⁵ Expert Evidence Bundle 7; pages 1458-1459, paragraph 3.2.3. Note (c).

⁴⁶⁶ Expert Evidence Bundle 7; page 1459, paragraph 3.2.3. Note (d).

⁴⁶⁷ Expert Evidence Bundle 7; pages 1458-1460, paragraph 3.2.3. Note (e).

⁴⁶⁸ Expert Evidence Bundle 7; page 1460, paragraph 3.2.3. Note (f).

phone of a cheque drawn on Mr. Wen's HSBC account, dated 30 October 2016, for HK\$2 million, in which the payee was Lam Wai Ho, together with a related Hang Seng Bank deposit advice reflecting the deposit of the cheque at 14:18 on 1 November 2016. Also, he was shown a copy of the photograph which described the storage path as being WeChat, 14:20 on 1 November 2016.⁴⁶⁹ In response to the question as to why the photograph was on his mobile phone, he said he didn't remember. He said, "But I did help MAN Lai Tak a lot, that is, helping him deposit cheques." He did not recognise the handwriting, "...as far as I can see, this pen is not mine". Having been shown a copy of the cheque obtained from the bank, he said that he did not remember if he had deposited the cheque. Of the reference to a WeChat message was also 'send' (sic), he said he did not remember.⁴⁷⁰

(ii) 1 November 2016 - HK\$346,000; payee Lam Wai Ho

441. Mr. Chim was also shown a similar set of copies of photographs from his mobile phone of a cheque, dated 1 November 2016, for HK\$346,000 in which the payee was also Lam Wai Ho, together with the related Hang Seng Bank deposit advice, dated 17:12 on 2 November 2016, together with a copy of the photograph from his mobile phone, which described the storage path as being WeChat, 17:13 on 2 November 2016.⁴⁷¹ In response to being asked, "if (you) didn't deposit the cheque for him, then why did (it) appear on your phone?" Mr. Chim responded, "Well, the only possibility is that I deposited the cheque for him." He added, "If (it) appears on my phone, the only (possibility) is that I deposited the cheque for him".⁴⁷²

Mr. Lam Wai Ho's explanation

442. During the record of interview conducted of him by the Commission, Mr. Lam was shown copies of the three cheques drawn on the account of Mr. Wen Lide in which the payment to him to a total of HK\$4,346,000 had been made. Having explained, that he knew Mr. Wen Lide as "Ah Man", that being his surname, he said:⁴⁷³

"He wanted to buy an apartment in Hong Kong... He said to buy in Rambler Crest, for he knew that I lived in Rambler Crest... Well, he asked me to go apartment hunting for him, and transferred the money to my account... But for some reason, the deal was off in the end, so I gave him a refund."

⁴⁶⁹ Witness Evidence Bundle 5, pages 2607-2608.

⁴⁷⁰ Witness Evidence Bundle 5; pages 2289-2292, counter #s 1698-1715.

⁴⁷¹ Witness Evidence Bundle 5, pages 2610-2611.

⁴⁷² Witness Evidence Bundle 5; pages 2293-2295, counter #s 1722-1731.

⁴⁷³ Witness Evidence Bundle 17; pages 10083-10085, counter #s 483-498.

443. Mr. Lam added that he had said that, "...the tax would be higher if he bought it using his name, lower tax for Hong Kong residents... So he transferred the money to my account."⁴⁷⁴ He said that he had no idea why three separate cheques had been written.⁴⁷⁵ Mr. Lam Wai Ho explained that, after Mr. Wen had decided, "out of the blue", not to buy property in Hong Kong, he asked him, "to transfer it back to the mainland". Then, after he had explained that he had no means of doing so, he said, "...he might have asked me to transfer it to a friend."⁴⁷⁶

Transfers from Mr. Lam Wai Ho's HSB account: savings to current account

444. Following the deposit of HK\$4,346,000 into Mr. Lam's savings account the following transfers were made to his current account, prior to which the balance was:⁴⁷⁷

10 November 2016 - HK\$2 million; balance HK\$165.56

12 December 2016 - HK\$700,000; balance HK\$1,115.56 and

21 December 2016 - HK\$1,350,000; balance HK\$955.56.

IV. Disbursements from Mr. Lam Wai Ho's current account with Hang Seng Bank

(i) Transfer by 6 cheques to the account of Mr. Winson Chim with HSB

445. Of the HK\$4,346,000 remitted to Mr. Lam's Hang Seng Bank account by the three cheques drawn on Mr. Wen's HSBC account, described above, Mr. Fordham noted that a total of HK\$4,096,000 was remitted by six cheques to Mr. Winson Chim's Hang Seng Bank account.⁴⁷⁸

Cheque no.	Cheque date	Cheque clearance date	Amount HK\$
426722	11 Nov 16	14 Nov 16	450,000.00
426723	18 Nov 16	21 Nov 16	800,000.00
426724	27 Nov 16	28 Nov 16	796,000.00
426725	1 Dec 16	14 Dec 16	700,000.00
426726	9 Dec 16	3 Jan 17	700,000.00
426727	16 Dec 16	25 Jan 17	650,000.00
			4,096,000.00

446. Two of the cheques, with serial numbers 426725 and 426726, each in the sum of

⁴⁷⁴ Witness Evidence Bundle 17; page 10089, counter #s 528 and 530.

⁴⁷⁵ Witness Evidence Bundle 17; page 10092, counter # 552.

⁴⁷⁶ Witness Evidence Bundle 17; pages 10090-10091, counter #s 538-542.

⁴⁷⁷ Witness Evidence Bundle 17, pages 10334 and 10338.

⁴⁷⁸ Expert Evidence Bundle 7; page 1466, paragraph 4.2.3, Note (a).

HK\$700,000 were re-presented after the initial debit entries had been reversed. Apparently, the reversal was due to there being insufficient funds in the account. A return cheque charge of HK\$150 was debited to the account on each occasion. The transfer of HK\$700,000 on 12 December 2016 and HK\$1,350,000 on 21 December 2016, by way of credits from Mr. Lam's savings account, provided the funds necessary to permit processing of those two cheques.⁴⁷⁹ Mr. Lam denied any knowledge of the reason for the reversal and re-presenting of the cheque number 426725. It never occurred to him to check his account.⁴⁸⁰ Mr. Lam confirmed that he did not share his mobile banking password or his ATM password with anyone else.⁴⁸¹

Mr. Lam's further explanation: signing blank cheques

447. Having been shown a copy of the cheque drawn on his account, dated 11 November 2016, payable to Chim Chor Yue in the sum of HK\$450,000, Mr. Lam identified his signature, but denied having written the name of the payee or the amount, "...that handwriting wasn't mine."⁴⁸² Of how that had come about, he said, "... he asked me to give it to someone, I mean, to transfer that money to someone, so I did it."⁴⁸³ Mr. Wen had told him the name Chim Chor Yue, saying "I told him to ask you for it, you can just give him the cheque". Mr. Lam suggested that Mr. Wen said "Something like that, so I gave it to him."⁴⁸⁴

448. Of the number of cheques that he had signed, Mr. Lam said:⁴⁸⁵

"I did sign a few. Mr. MAN (said), "...Would you do me the favour ... of giving them to a certain person", and I gave them to that person."

449. In the course of his record of interview, Mr. Lam was taken to all six cheques drawn on his account with sequential cheque numbers, namely: 426722 to 426727. The effect of his account was that, whilst he had signed the cheques, he had not written anything else on the cheques before he handed them over. He was not asked and he did not say whether he handed over the cheques on one or more than one occasion. However, it is to be noted from Mr. Lam's bank statement that cheques with numbers subsequent to the six sequential cheques he signed for that purpose were presented and cleared on dates before some of the sequential series of

⁴⁷⁹ Witness Evidence Bundle 17, pages 10337-10338 and 10341.

⁴⁸⁰ Witness Evidence Bundle 17; pages 10114-10117, counter #s 721-736.

⁴⁸¹ Witness Evidence Bundle 17; pages 10099-10103, counter #s 603-635.

⁴⁸² Witness Evidence Bundle 17; page 10099, counter # 602.

⁴⁸³ Witness Evidence Bundle 17; page 10098, counter # 596.

⁴⁸⁴ Witness Evidence Bundle 17; page 10107, counter # 666.

⁴⁸⁵ Witness Evidence Bundle 17; page 10103, counter # 636.

cheques he had written. For example, cheque number 426728 for HK\$2,900 was cleared on 28 November 2016, well before cheques with the serial numbers 426725-426727 were dated or cleared. Accordingly, it seems likely that all six of the cheques were signed and handed over before cheque number 426728.

450. Of whether the person to whom he had given the cheque was Mr. Chim, Mr. Lam said “It might have been, it might not have been.”⁴⁸⁶

451. Of why he had been asked to sign six separate cheques rather than one cheque, Mr. Lam said, “Well, it was his money after all... I only did as he bid.” Of the suggestion that in being asked to conduct himself in this way he had been “troubled” by Mr. Wen, Mr. Lam said, “Well, I went downstairs and said goodbye, how much trouble could that have been?” He appeared to agree that was a reference to his home.⁴⁸⁷

452. Finally, having been shown all of the six cheques which he had signed, when it was suggested to him that he had returned all of the money to Mr. Wen, Mr. Lam said, “I returned all of it to him.”⁴⁸⁸

(ii) Withdrawal of HK\$250,000 in cash - 8 November 2016

453. Mr. Lam acknowledged that a withdrawal in cash of HK\$250,000 had been made on 8 November 2016. Of the purpose of that withdrawal, he said, “Was it the securities cash ... account?... Might have been for buying stocks.” He went on to add, “...it might have been the money for buying myself an apartment in the mainland.” He said that he had bought an apartment in Sihui at that time.⁴⁸⁹

Mr. Chim Chor Yue’s account

454. In his record of interview by the Commission, dated 14 November 2018, Mr. Chim Chor Yue was shown copies of all of the six cheques that had been signed by Mr. Lam with the cheque serial numbers 426722-426727.⁴⁹⁰

455. Of cheque number 426722, he said that the handwriting of his name, the date and the amount of money were written by his wife, Mdm. Cynthia Chen. The date was written in

⁴⁸⁶ Witness Evidence Bundle 17; page 10104, counter # 642.

⁴⁸⁷ Witness Evidence Bundle 17; page 10113, counter #s 709-714.

⁴⁸⁸ Witness Evidence Bundle 17; page 10118, counter # 742.

⁴⁸⁹ Witness Evidence Bundle 17; pages 10125-10127, counter #s 787-802.

⁴⁹⁰ Witness Evidence Bundle 5; pages 2216-2238, counter #s 1179-1336; pages 2578-2584.

numerals and the payee and amount of money in words were written in capital letters. He said, “I asked her to write (the cheque).” Of why he had not written the cheque himself, he said “I usually asked her for these (matters), asked her to help writing (the cheques).”⁴⁹¹

456. Mr. Chim explained that he had been given the cheque by Mr. Lam Wai Ho. He had been asked to go to his home and had done so, namely going to Mr. Lam’s home in Tsuen Wan where he had been given the cheque by Mr. Lam.⁴⁹²

457. Of cheque number 426723, he said, “I wrote this one.”⁴⁹³ The cheque was dated 18 November 2016 in the amount of HK\$800,000. The payee and the amount were written in cursive script. The month was referred to as “Nov”.⁴⁹⁴

458. Of cheques with the serial numbers 426724 to 426726, Mr. Chim said that they had been written by his wife in similar circumstances: “written by my wife”; “She wrote this one”; “this is also my wife’s handwriting”; and “This one was written by my wife”. Although he was not asked to specifically identify the handwriting on cheque number 426727, he agreed that all six cheques had been compiled for the reasons he had mentioned. On those cheques, other than the cheque dated 18 November 2016, the dates were written in numerals and the payee and amount of money in words were written in capital letters.⁴⁹⁵

459. Mr. Chim claimed that the purpose of the arrangement between him and Mr. Wen was:⁴⁹⁶

“My money went to the Mainland and became Renminbi. So I just gave (him) Renminbi he gave me Hong Kong dollars, just like that.”

Mdm. Cynthia Chen’s account: second record of interview

460. In her second record of interview, dated 29 November 2018, Mdm. Cynthia Chen was shown all six cheques, drawn on the account of Mr. Lam with HSB, with the serial numbers 426722 to 426727⁴⁹⁷, dated on and between 11 November 2016 to 16 December 2016, in which the payee was described as Chim Chor Yue and asked first, if she recognised the handwriting

⁴⁹¹ Witness Evidence Bundle 5; pages 2216-2220, counter #s 1179-1212.

⁴⁹² Witness Evidence Bundle 5; pages 2217-2218, counter #s 1187-1196.

⁴⁹³ Witness Evidence Bundle 5; pages 2234-2235, counter #s 1307-1314.

⁴⁹⁴ Witness Evidence Bundle 5, page 2579.

⁴⁹⁵ Witness Evidence Bundle 5; pages 2233-2238, counter #s 1295-1338.

⁴⁹⁶ Witness Evidence Bundle 5; page 2226, counter # 1246.

⁴⁹⁷ Witness Evidence Bundle 3; pages 1420-1422, counter #s 1597-1604. Witness Evidence Bundle 4, pages 1761-1767.

of the payee and, secondly if she wrote any of them. She replied:⁴⁹⁸

“I don’t remember. I did actually write cheques, but I can’t recall. No, I can’t remember.”

In response to the question, “You don’t recognise it”, She said, “I really can’t remember.”⁴⁹⁹

Disbursement of the HK\$4,346,000 transferred to Mr. Lam’s account

461. Mr. Fordham noted that all of the HK\$4,346,000, that has been transferred by three cheques from the HSBC account of Mr. Wen Lide to the account of Mr. Lam with HSB, had been disbursed by payment of the six cheques drawn on the account of Mr. Lam in favour of Chim Chor Yue, together with the withdrawal in cash of HK\$250,000 by Mr. Lam on 8 November 2016.⁵⁰⁰

Whereabouts of Lam’s Funds	Amount HK\$
Chim’s HSB Account	4,096,000.00
Cash withdrawn by Lam	250,000.00
	4,346,000.00

462. Although Mr. Lam had said in his record of interview that he had returned all the monies given to him by Mr. Wen in the three cheques, by which he is taken to have meant that he had dealt with it as instructed in passing over six signed but otherwise blank cheques, he had not disbursed all the HK\$4,346,000 he had received. That much was clear from the HSB bank statements he received of his account. There was an outstanding balance of HK\$250,000. That is the amount that he withdrew in cash on 8 November 2016.

Mr. Lam’s withdrawal of HK\$250,000: the balance of the funds deposited from Mr. Wen’s account

463. Of the circumstances of the reasons for Mr. Lam’s withdrawal of HK\$250,000 in cash on 8 November 2016, it is to be remembered that he denied having received anything back from the cheque of HK\$144,217 that he had given Mr. Wen to buy shares. On his account, he appeared to have done absolutely nothing to recover the money or any profits made from Mr. Wen investing in stocks on his behalf. We are satisfied that is inherently implausible. In fact, the cheque was cleared on 24 August 2016 and the monies used to buy Dan Form shares

⁴⁹⁸ Witness Evidence Bundle 3; pages 1420-1422, counter #s 1597-1604.

⁴⁹⁹ Witness Evidence Bundle 3; page 1422, counter #s 1603-1604.

⁵⁰⁰ Expert Evidence Bundle 7; page 1468, paragraph 4.3.1.

in Mr. Wen's Shenwan account at HK\$1.653935 per share, plus commission and charges.⁵⁰¹ All the Dan Form shares bought in that account were sold, beginning on 29 September 2016 at HK\$2.69 per share plus commission and charges. The purchase and sale of Dan Form shares in those circumstances, together with commission and charges, would have produced proceeds of sale of about HK\$233,000, which is calculated on the following robust basis:

(From Appendix 3)

	Share price*	No. of shares	Total commission and charges (HK\$)	Avg. commission & charges per share (HK\$)	Share price plus commission and charges (for purchase) (HK\$)	Share price net of commission and charges (for disposal) (HK\$)
24-Aug-16	1.653935	1,070,000.00	6,365.49	0.0059490561	1.6598841	
29-Sep-16	2.690000	620,000.00	5,999.28	0.0096762581		2.6803237

Deposit amount (HK\$)	144,417.00	(A)
Share price plus commission and charges (for purchase) (HK\$)	1.6598841	(B)
No. of shares that could be purchased	87,004.26965	(A) ÷ (B); rounded down to <u>87,004</u> shares

At the price of HK\$2.6803237, 87,004 shares will be sold for HK\$233,198.89 (net of commission and charges).

Conclusion

464. We are satisfied that Mr. Lam's withdrawal of HK\$250,000 from his own account of the monies that have their provenance in payments from Mr. Wen's account represented his recovery of his investment of HK\$144,217 with Mr. Wen, together with the profits of that investment. Perhaps, the additional payment, over and above a rough calculation of profits made of about HK\$17,000, represented his reward for his services to Mr. Wen.

V. Disbursement of funds from Mr. Chim's HSB account

465. Mr. Fordham noted that in the period on and between 15 November 2016 and

⁵⁰¹ Exhibits Bundle 11, page 6547-9.

27 January 2017 a total of HK\$3,860,527 was transferred from Mr. Chim's HSB account to the Joint Account of Mr. Chim and Mdm. Cynthia Chen at HSB in nine remittances.⁵⁰²

Transfer type	Transfer date	Amount HK\$	Funding from Chim's Funds
ATM	15 Nov 16	121,768.00	
ATM	19 Nov 16	200,000.00	Yes
ATM	19 Nov 16	200,000.00	Yes
ATM	23 Nov 16	400,000.00	Yes
ATM	29 Nov 16	796,000.00	Yes
ATM	07 Dec 16	42,759.00	
ATM	19 Dec 16	700,000.00	Yes
CR transfer	10 Jan 17	700,000.00	Yes
CR transfer	27 Jan 17	700,000.00	Yes
		3,860,527.00	

466. Mr. Fordham noted that in seven of the remittances, to a total of HK\$3,696,000⁵⁰³, the bank balances immediately before the remittances were substantially funded by Chim's Funds.⁵⁰⁴ Without the inflow of Chim's Funds, there would not have been sufficient funds from the pre-existing opening balance and/or the prior inflows to fund the remittances to the Joint Bank Account.⁵⁰⁵

467. Mr. Fordham said that the HK\$3,696,000 represented 90.2% of Chim's Funds.⁵⁰⁶ The transfer, on the one hand, and the receipt, on the other hand, of the funds was reflected in the bank statements of the two bank accounts, namely Mr. Chim's HSB current account and the HSB current account of the Joint Account, that he held with Mdm. Cynthia Chen.⁵⁰⁷

VI. Disbursement of monies from the Joint Account at HSB

(i) Transfers to Mdm. Cynthia Chen's HSB account

468. Mr. Fordham noted that by 29 remittances a total of HK\$3,223,786.46 was transferred from the Joint Account of Mr. Chim and Mdm. Cynthia Chen to Mdm. Cynthia Chen's HSB

⁵⁰² Expert Evidence Bundle 7; page 1471, paragraph 5.2.3. Note (b).

⁵⁰³ Expert Evidence Bundle 7, page 1439. List of Abbreviations of Mr. Fordham's report.

"Joint Funds" were defined as, "The amount of Chim's Funds that was transferred from Chim's HSB Account to the Joint Bank Account, totalling HK\$3,696,000.00".

⁵⁰⁴ Expert Evidence Bundle 7, page 1438. "Chim's Funds" were described in the List of Abbreviations to Mr. Fordham's report as being:

"The amount of Lam's Funds that was transferred from Lam's HSB Account to Chim's HSB Account, totalling HK\$4,096,000.00".

⁵⁰⁵ Expert Evidence Bundle 7; page 1471, paragraph 5.2.3. Note (b).

⁵⁰⁶ Expert Evidence Bundle 7; page 1472, paragraph 5.2.4 (e).

⁵⁰⁷ Expert Evidence Bundle 5, pages 1427-136 to 1427-140 and 1427-143 to 1427-148. Attachments 9 and 10 of the written instructions to Mr. Fordham.

account. On the other hand, he noted that a total of HK\$250,400.72 was transferred from Mdm. Cynthia Chen's HSB account to the Joint Account. Mr. Fordham said:⁵⁰⁸

“Based on my review, the sum of the pre-existing opening balance and the total inflows excluding the Joint Funds is HK\$417,131.66*, and this amount is insufficient to fund the remittances to Chen's HSB Account (i.e. HK\$3,223,786.46). I have calculated that, out of the total outflows to Chen's HSB Account, a minimum amount of HK\$2,806,654.80 was funded from the Joint Funds.

[*HK\$2,806,654.80 is the amount of total outflows to Chen's HSB Account (i.e. HK\$3,223,786.46) less the pre-existing opening balance and the other prior inflows (i.e. HK\$417,131.66).]

VII. Disbursements from Mdm. Cynthia Chen's HSB account

469. Of the balances, inflows and outflows in Mdm. Cynthia Chen's HSB account, Mr. Fordham noted:⁵⁰⁹

- an opening balance of HK\$12,760.79;
- an ending balance of HK\$47,182.02;
- total fund inflows of HK\$3,591,141.65; and
- total fund outflows of HK\$3,556,521.66.

Of the total fund inflows, he said HK\$3,223,786.46 were attributable to Chen's Funds.⁵¹⁰

470. Of the transactions in the account of Mdm. Cynthia Chen with HSB in the period 21 November 2016, the date of the first transfer from the Joint Account to Mdm. Cynthia Chen's HSB account, to 4 March 2017, the date when the opening balance and any inflows were substantially exhausted, Mr. Fordham said:⁵¹¹

“Based on the transaction details recorded on the bank statements of the Layer Five Accounts, I note aggregate net outflows of HK\$3,173,559.94 remitting to a total of 18 different parties...”

471. Those payments included payments made to:

⁵⁰⁸ Expert Evidence Bundle 7; page 1475, paragraph 6.2.3. Note (a).

⁵⁰⁹ Expert Evidence Bundle 7; pages 1483-1484, paragraph 7.2.4 (a)-(d).

⁵¹⁰ Expert Evidence Bundle 7; pages 1438 (List of Abbreviations of Mr. Fordham's report) and 1477, paragraph 6.2.4(f).

⁵¹¹ Expert Evidence Bundle 7; page 1482, paragraph 7.2.3. Note (b).

- (i) law firms, to a total of HK\$2,804,721.00;
- (ii) banking institutions or financial service companies to a total of HK\$281,378.80;
- (iii) Inland Revenue Department in the amount of HK\$61,311.00;
- (iv) insurance providers to a total of HK\$15,905.14;
- (v) The Hong Kong Polytechnic University to a total of HK\$5,000.00; and
- (vi) other service providers totalling HK\$5,244.00.⁵¹²

472. Mr. Fordham described the substantial disbursements from Mdm. Cynthia Chen's HSB account in a Table.⁵¹³

Whereabouts of Chen's Funds	Amount HK\$
Deannie Yew & Associates, Solicitors	1,866,411.00
Arthur K. H. Chan & Co	357,492.45
Ma Tang & Co	220,000.00
Katherine Y W Or & Co	184,749.60
The Joint Bank Account	116,795.02
Kok & Ha, Solicitors	116,582.60
CCB (Asia) Corporation	75,551.40
Inland Revenue Department	58,611.00
Funds retained at the Layer Five Accounts	49,992.02
PrimeCredit	41,700.00
Public Finance Ltd	35,373.00
New Advanced Limited	23,111.67
Iu, Lai & Li Solicitors & Notaries	19,500.00
Citibank (H.K.) Limited	12,119.00
WeLend Limited	7,752.67
Chubb Life	7,002.23
Brilliant Luck Holding Limited	6,800.00
Top Power Development Limited	6,300.00
Cash withdrawals by Chen	5,299.37
Gainfull Motors Ltd	4,880.00
The Hong Kong Polytechnic University	2,700.00
Yeung Wan Choi	2,600.00
Lit Sau Fong Oway	1,411.00
Mutual Insurance Consultants Co	860.00
Bank charges	192.43
	3,223,786.46

⁵¹² Ibid.

⁵¹³ Expert Evidence Bundle 7; page 1485, paragraph 7.3.1.

Purchase of property in the sole name of Mdm. Cynthia Chen

473. It is to be noted that a number of the disbursements of monies described in the Table above were for the purchase of property in the sole name of Mdm. Cynthia Chen:⁵¹⁴

- the payment of HK\$357,492.45 to Arthur K. H. Chan & Co, in relation to the purchase of Motor Cycle Parking Spaces No. M19 and M20 on Level 1 Floor at Monte Vista, 9 Sha On Street, Shatin for HK\$198,000 and HK\$178,000 respectively;
- the payment of HK\$220,000 to Ma Tang & Co., in relation to the purchase of Car Parking Space 82, Level 1, Garden Rivera, Shatin for HK\$1,250,000;
- the payment of HK\$184,749.60 to Katherine Y W Or & Co, in relation to the purchase of Car Parking Space 82, as above;
- the payment of HK\$116,582.60 to Kok & Ha, Solicitors in relation to the purchase of Car Parking Space 104, Level 1, Garden Rivera, Shatin for HK\$1,200,000; and
- the payment of HK\$19,500 to Iu, Lai and Li Solicitors & Notaries in relation to the purchase of Car Parking Space 104, Level 1, Garden Rivera, Shatin, as above.

441. Of the provenance of the monies so disbursed, Mr. Fordham said:⁵¹⁵

“...the sum of the pre-existing opening balance and the total inflows excluding Chen’s Funds is HK\$380,115.98*, and this amount is insufficient to fund Chen’s net outflows (i.e. HK\$3,173,559.94).

[*HK\$380,115.98 is the sum of (i) pre-existing opening balance of HK\$12,760.79 and (ii) total fund inflows of HK\$3,591,141.65 less Chen’s Funds of HK\$3,223,786.46.]”

⁵¹⁴ Exhibits Bundle 10A, pages 5820-5983.

⁵¹⁵ Expert Evidence Bundle 7; page 1482, paragraph 7.2.3. Note (b).

CHAPTER 12

MADAM CYNTHIA CHEN

Mdm. Cynthia Chen's background and qualifications

474. Mdm. Cynthia Chen Si Ying testified that she was 58 years of age and had been brought up in Shanghai.⁵¹⁶ In her first record of interview by the Commission she said that she had been born in Shanghai⁵¹⁷. Previously she had been known as Chen Hong.⁵¹⁸ However, she said that her ancestral home was somewhere in Zhejiang or Jiangsu province.⁵¹⁹ She graduated in nursing from Shanghai Medical School in 1986. Then, she went to study English in Sydney, Australia. Afterwards, she joined her husband, Mr. Chim Chor Yue, and lived in Singapore. She spoke Mandarin, Shanghainese, Cantonese and English. She is a Singaporean citizen.⁵²⁰

Mr. Chim Chor Yue

475. Mdm. Cynthia Chen said that her husband, Chim Chor Yue, Winson was a Hongkonger, whom she had met in Shanghai, where they married.⁵²¹ In her witness statement, she described her husband as operating his own business, trading in construction materials and hardware. As a result, he travelled frequently on business trips to the mainland. Given that he received payments in Renminbi in the Mainland, she said that, "...he always needed to find ways to remit his business earnings to Hong Kong as family expenses."⁵²²

Employment and qualifications

476. In the mid-1990s Mdm. Cynthia Chen and her husband came to Hong Kong and she carried out human resources, clerical and administrative work at the office of a company which manufactured construction equipment.⁵²³ She obtained a degree from the Hong Kong Open University in 2005.⁵²⁴ Having studied part-time at the Hong Kong Polytechnic University, she obtained a Master's degree in Corporate Governance in late 2009 or 2010. As a result, she qualified as a company secretary.⁵²⁵ She was deputy company secretary of Sany International

⁵¹⁶ Transcript; 8 January 2025, pages 87-88.

⁵¹⁷ Witness Evidence Bundle 1; page 331, counter #s 264-265.

⁵¹⁸ Transcript; 13 January 2025, pages 33-34.

⁵¹⁹ Witness Evidence Bundle 1; pages 331-332, counter #s 264-271.

⁵²⁰ Transcript; 8 January 2025, pages 87-88. Transcript; 15 January 2025, page 29.

⁵²¹ Witness Evidence Bundle 1; pages 335-336, counter #s 296-307.

⁵²² Core Bundle 2; pages 177-178, paragraph 20.

⁵²³ Transcript; 8 January 2025, pages 87-90.

⁵²⁴ Witness Evidence Bundle 1, page 339, counter #327.

⁵²⁵ Witness Evidence Bundle 1, page 341, counter #s 344-347.

but, when it was listed, she left and joined Dan Form as its deputy company secretary. Mr. Albert Fung Man Yuen was the company secretary, but she soon became the company secretary, with effect from 30 June 2011, and he became the company's financial controller.⁵²⁶

477. In July 2016, she studied for an examination set by the Hong Kong Finance Academy for entrance to the PhD course in finance.⁵²⁷ As she remembered, the examination was, "probably one day."⁵²⁸ In or around September 2016 she was informed that she had passed the examination and was enrolled in the course for a PhD in finance.⁵²⁹

Mdm. Cynthia Chen's relationship with Mr. Dai

478. Mdm. Cynthia Chen said that, as company secretary, her immediate superior was the board of directors of the company. She did not work for Mr. Dai personally and did not report to him. Mr. Dai had a personal secretary, Mdm. Cheng Qian, Rita and two personal assistants.⁵³⁰

Mdm. Cynthia Chen's relationship with Mr. Wen Lide

479. In her oral evidence-in-chief Mdm. Cynthia Chen said that she regarded Mr. Wen, whom she knew to come from Shanghai, as someone "[coming] from the same place ... that means we come from the same place, we speak the same dialect, we were born and grew from the same place". He was not a relative, rather he was a friend of her husband, whom she had met "...tens of years ago" in the late 90s and the early 2000s. She had no contact with him since. She acknowledged that she had his name, albeit with an incorrect middle character, and telephone number stored on her mobile phone. That entry had been made when she met Mr. Wen and was simply transferred with all the other data to successive new mobile phones.⁵³¹

480. In oral evidence-in-chief, Mdm. Hon Sin Mi, a senior manager of the Enforcement Division of the Commission, said that she had spoken to Mdm. Cynthia Chen during the search of her home on 16 March 2017. Having shown her the search warrant and explained its contents, she had asked if Mdm. Cynthia Chen knew Mr. Wen Lide. Mdm. Cynthia Chen said that Mr. Wen Lide was the husband of a relative of hers and that he lived in Shanghai. That information, together with other details of the search, was recorded in a Time Log by her

⁵²⁶ Core Bundle 2, page 174, paragraph 5.

⁵²⁷ Witness Evidence Bundle 1; pages 350-353, counter #s 410-434.

⁵²⁸ Witness Evidence Bundle 1; page 355, counter # 443.

⁵²⁹ Core Bundle 2; page 175, paragraph 9.

⁵³⁰ Core Bundle 2; page 174, paragraph 6.

⁵³¹ Transcript; 9 January 2025, pages 32-35.

colleague on 17 March 2017 and checked by Mdm. Hon.⁵³² In cross-examination, Mdm. Hon agreed with the suggestion that Mdm. Cynthia Chen had replied that Mr. Wen was, “the husband of her distant cousin”.⁵³³

481. By contrast, in her first record of interview the following exchange ensued. In response to the suggestion by Mdm. Cheung that she had told Mdm. Hon Sin Mi that Mr. Wen, “was your relative”, Mdm. Cynthia Chen said:⁵³⁴

“... I remember that one of your colleagues told me -- I told him that he was probably one of my relatives. He and I, more or less, why? Actually, you ask me what kind of relative he is? I really have no idea, but as far as I remember, he probably told me on a certain occasion that he was one of my distant relatives. Well, whether he is a relative or what kind of relative he is, I have no idea.”

482. When asked, “...you did not deny that you told him that he is your relative?”, Mdm. Cynthia Chen said:⁵³⁵

“I didn’t ... I did not positively told him that I was --I said--he said he was a relative, he said that he was probably my relative...”

483. Having confirmed that she was describing what Mr. Wen had told her, Mdm. Cynthia Chen said:⁵³⁶

“He (said that he) was my relative or the like. Well, I have no idea what kind of relative he was, or how he knew that he was my relative. I don’t know. Perhaps he intended to get close to me, to be my friend, by saying that he was my relative, I have no idea. So I told your colleague that he claimed to be my relative, but I was not sure if he was my relative...”

Mdm. Cynthia Chen’s Shenwan account: relationship with Mdm. Lucy Tsui

484. Mdm. Cynthia Chen opened a Securities Margin Account with Shenyin & Wanguo Securities (Hong Kong) Co., Ltd, the earlier iteration of Shenwan, on 28 June 2007⁵³⁷ on the recommendation of Mdm. Lucy Tsui, who was her account executive and remained her account

⁵³² Transcript; 10 December 2024, pages 23-25. Exhibits Bundle 12, pages 6721-6724.

⁵³³ Transcript; 10 December 2024, page 40.

⁵³⁴ Witness Evidence Bundle 1; pages 404-405, counter #s 811-812.

⁵³⁵ Witness Evidence Bundle 1; page 406, counter #s 819-820

⁵³⁶ Witness Evidence Bundle 1; pages 406-407, counter # 822.

⁵³⁷ Witness Evidence Bundle 2, pages 585-600.

executive at all material times.⁵³⁸ A subsequent Application Form, dated 18 May 2015, for a change of the nature of the account to include a Stock Options account and a Futures account, bore the manuscript title, “Urgent!” Mdm. Cynthia Chen’s employer was stated to be, “Dan Form Holdings” and her Profession, “Secretary of Director”.⁵³⁹ Mdm. Lucy Tsui signed as a witness and as the Licensed Person.⁵⁴⁰

485. Notwithstanding the information stated on that Application Form, witnessed by Mdm. Lucy Tsui, in her record of interview when asked if she knew what Mdm. Cynthia Chen’s job was, she said:⁵⁴¹

“I know little about CHEN Si Ying(’s job)... she appeared to work at Sany before... It appears to ring a bell with me that she used to work at Sany before... 631, the stock code 631.”

When told that Mdm. Cynthia Chen was in fact, “...the company secretary of Dan Form Holdings”, Mdm. Lucy Tsui said “I don’t know... I don’t know she is from Dan Form.”

Transactions in the account of Mdm. Cynthia Chen with Shenwan

486. In the first half of 2016, she held various shares in the account to a value of about HK\$280,000.⁵⁴² On 28 June 2016, Mdm. Cynthia Chen sold all her shares in her Shenwan account for HK\$259,898.53, resulting in an account balance of HK\$264,545.59 on the settlement date of 30 June 2016. On the same day, Mdm. Cynthia Chen transferred HK\$264,436.05 out of the account balance of HK\$264,545.59 to her Hang Seng Bank account.⁵⁴³ The Hang Seng Bank account statement of Mdm. Cynthia Chen stated that HK\$264,421.05 was received on 30 June 2016.⁵⁴⁴

Mdm. Cynthia Chen: knowledge of Mr. Wen’s Shenwan account; Mr. Wen’s purchases and sales of Dan Form shares; and assistance in transferring monies to his accounts

Records of interview

487. In her first record of interview by the Commission, dated 8 November 2018, in answering the question of whether she knew that Mr. Wen Lide had a securities account with

⁵³⁸ Witness Evidence Bundle 1, pages 428-431.

⁵³⁹ Witness Evidence Bundle 2, pages 605-608 and 634-640.

⁵⁴⁰ Transcript; 7 January 2025, pages 11-12.

⁵⁴¹ Witness Evidence Bundle 18A; pages 10688-10690, counter #s 931-946.

⁵⁴² Witness Evidence Bundle 2, pages 644-669.

⁵⁴³ Witness Evidence Bundle 1; pages 449-454, counter #s 1132-1167; Witness Evidence Bundle 2, page 620.

⁵⁴⁴ Exhibits Bundle 7, page 3696.

Shenwan, Mdm. Cynthia Chen said, “Well, I have never heard of it, (I) am not clear about that.”⁵⁴⁵ She said that she did not know that Mr. Wen and his wife Mdm. Lee Sin (Li Qian) traded in Dan Form shares at the relevant period in 2016. She did not know with which securities firm Mr. Wen placed his orders. Having been told that he did so with Shenwan, she said that she was even “less clear” with whom he placed orders at Shenwan. She acknowledged that she knew Mdm. Lucy Tsui, whom she called Tsui Hung. She described her as “kind of a broker, right?”.⁵⁴⁶

488. In her second record of interview, dated 29 November 2018, in answer to the question of whether she had “...helped transfer money to MAN Lai Tak for his purchases?”, Mdm. Cynthia Chen said:

“I didn’t.”

Of whether she knew that Mr. Chim, “... took part in the transfers?”, she repeatedly said, “I don’t remember”; “I can’t recall”; and “In 2016, I don’t remember.”⁵⁴⁷

489. However, later in that record of interview Mdm. Cynthia Chen acknowledged that there were several WeChat messages from Mdm. Lucy Tsui on her mobile phone, including one sent at 09:52 on 28 July 2016 advising her:⁵⁴⁸

“Wen Lide’s specified account in the Standard Chartered Bank has been opened successfully, with details below: Standard Chartered Bank.

Beneficiary name: SWSHK-Wen Lide. Account number 57210849026.”

490. The cheque, dated 28 July 2016, for HK\$100,000 on the HSBC account of Mr. Wen Lide credited to the account of Mr. Wen with Shenwan described the payee as ‘SWSHK-Wen Lide’. The storage path of the photograph of that cheque on the mobile phone of Mr. Chim referred to the time 15:29 on 28 July 2016.⁵⁴⁹

491. Notwithstanding her earlier answers, when shown that cheque in her second record of interview, Mdm. Cynthia Chen said, “Yes, it’s my handwriting.” She went on to add, “This handwriting is (mine). I wrote it for him.” She explained that her husband had given her the cheque and she wrote as requested by him. She denied that she had told Mr. Wen to buy Dan

⁵⁴⁵ Witness Evidence Bundle 1; page 418, counter #s 891-894.

⁵⁴⁶ *ibid*; pages 427-429, counter #s 974-987

⁵⁴⁷ Witness Evidence Bundle 3; pages 1385-1387, counter #s 1357-1373.

⁵⁴⁸ Witness Evidence Bundle 4, page 1695A.

⁵⁴⁹ Witness Evidence Bundle 5, pages 2585-2586.

Form shares, “I wouldn’t have said that.”⁵⁵⁰

492. Mdm. Cynthia Chen gave similar explanations in respect of three other cheques on the HSBC account of Mr. Wen and credited to his Shenwan account, namely: (i) a cheque in the sum of HK\$1,956,242, dated 24 August 2016; (ii) a cheque for HK\$534,000, dated 5 September 2016; and (iii) a cheque for HK\$762,000, dated 5 September 2016. In identifying her handwriting on the first cheque she said “This is definitely mine.” She said that her husband had asked her to write the cheque.⁵⁵¹ She made the same confirmation in respect of the second and third cheques.⁵⁵² Of the third cheque, dated 5 September 2016, for HK\$762,000 at first she said, “It is my handwriting, I wrote cheques for them.” However, that became “I don’t remember. Some of them look like mine, others not quite. I really don’t remember.” Finally, she said, “I am not entirely sure whether it was mine.”⁵⁵³

493. Of another cheque for HK\$300,000, dated 8 September 2016, drawn on the HSBC account of Mr. Wen and credited to his Shenwan account she said, “Again, I really can’t remember.” In face of the suggestion that the handwriting on that cheque did not look like the handwriting on the cheques that she had identified earlier she said, “If you put it like that, then I really am confused. I have no idea which was written by me, I really don’t remember.”⁵⁵⁴

494. Another WeChat message from Mdm. Lucy Tsui to her, at 11:13 on 24 August 2016, repeated those account details and stated, “This account accepts third-party deposits, only by cheque, but not via account transfer.”⁵⁵⁵

495. Of the receipt of those messages from Mdm. Lucy Tsui, Mdm. Cynthia Chen said, “I really don’t remember why she gave it to me.”⁵⁵⁶ In response to the suggestion that it was because she needed to transfer money to help Mr. Wen trade in stocks, she said:⁵⁵⁷

“I never helped him transfer money, I never helped him transfer money.”

⁵⁵⁰ Witness Evidence Bundle 3; pages 1390-1393, counter #s 1397-1420.

⁵⁵¹ Witness Evidence Bundle 3; page 1397A, counter # 1441.

⁵⁵² Witness Evidence Bundle 3; pages 1401-1402, counter #s 1478-1480.

⁵⁵³ Witness Evidence Bundle 3; pages 1403-1405, counter #s 1492-1504.

⁵⁵⁴ Witness Evidence Bundle 3; pages 1406-1407, counter #s 1515-1522.

⁵⁵⁵ Witness Evidence Bundle 4, page 1695A.

⁵⁵⁶ Witness Evidence Bundle 3; page 1338, counter # 1042.

⁵⁵⁷ Witness Evidence Bundle 3; pages 1338-1339, counter #s 1047-1048.

Witness Statement

496. However, in her witness statement, dated 29 August 2024, Mdm. Cynthia Chen said:⁵⁵⁸

“...at the material time, Wen had provided the signed cheques to Winson, for either Winson or I to physically deposit into the Shenwan Account in Hong Kong.”

Nevertheless, she went on to say:

“At all material times, I had no knowledge about Wens’ (sic) purchase and disposal of the Company’s shares.”

She added that she had, “...no knowledge of the source of funds used to purchase the Company’s shares.”⁵⁵⁹

497. Of the evidence that Mr. Wen had purchased Dan Form shares on a number of occasions, she said in her witness statement:⁵⁶⁰

“I was not aware of Wen’s investments at all material times, never provided investment advice to Wen on any occasion and strenuously deny that I had ever disclosed inside information to Wen.”

For her own part, she said, “...I had at all material times, never directly or indirectly acquired the Company’s shares as retail investor.”⁵⁶¹

Oral evidence

498. In her oral evidence-in-chief, Mdm. Cynthia Chen explained the answers that she had given in her second record of interview in respect of the various cheques drawn on the HSBC account of Mr. Wen and credited to his Shenwan account:⁵⁶²

“...in the later part of the interview, I actually explained that I couldn’t ... recognise the specific cheques. I only remember I wrote cheques before, but I couldn’t recognise which one I did write. And furthermore, I usually will add two lines to cross the cheque, and so I’m not sure which one did I actually fill in the amount.”

⁵⁵⁸ Core Bundle 2; pages 180-181, paragraphs 29 and 31.

⁵⁵⁹ *Ibid*; page 183, paragraph 38.

⁵⁶⁰ *Ibid*; page 183, paragraph 37.

⁵⁶¹ *Ibid*; page 183, paragraph 39.

⁵⁶² Transcript; 9 January 2025, page 50.

499. Of the WeChat message from Mdm. Lucy Tsui, dated 28 July 2016, in her response in cross-examination to the question of why she had been sent that message, Mdm. Cynthia Chen said:⁵⁶³

“This message was for my husband. I have not introduced Lucy to my husband, but my husband has spoken to her on the phone... (and) said to me that there would be a Shanghainese agent who would pass the account information to me. If I received information, I should pass it on to my husband.”

500. Mdm. Cynthia Chen agreed in cross-examination with the suggestion that she had not given that explanation to the Commission in her second record of interview.⁵⁶⁴ She agreed that she had not mentioned her husband’s involvement. That was because at the time she, “...almost forgot about that.” In September and October 2024, whilst she and her husband were reviewing the documents given to her by the Commission, her husband told her that, “...she (he) had a phone conversation with Lucy. Only then did I recall this event.”⁵⁶⁵

Mdm. Lucy Tsui

501. Of why she had sent the WeChat message to Mdm. Cynthia Chen at 09:52 on 28 July 2016 with the sub-account details of Mr. Wen Lide in Shenwan’s account with Standard Chartered Bank, in her oral evidence-in-chief, Mdm. Lucy Tsui said, “I think it is because Mr. Wen has called me and asked me to send the information of my (sic) specified account to Ms. Chen.”⁵⁶⁶

Mr. Chim

502. For his part, in his record of interview, Mr. Chim repeatedly denied knowing Mdm. Tsui Hung, Lucy:⁵⁶⁷

A: Do you know who is TSUI Hung (transliteration), Lucy Tsui?

C: (I) don’t know (her).

A: (You) don’t know (her). She’s a broker with a securities firm called Shenwan Hongyuan.

⁵⁶³ Transcript; 15 January 2025, page 61.

⁵⁶⁴ Transcript; 15 January 2025, page 62.

⁵⁶⁵ Transcript; 15 January 2025, page 67.

⁵⁶⁶ Transcript; 8 January 2025, page 9.

⁵⁶⁷ Witness Evidence Bundle 5; pages 2123-2124, counter #s 542-551.

C: (I) don't know (her).

A: (You) don't know (her)?

C: (I) don't know (her).

A: Well, she knows your wife, and your wife has a securities account there. Didn't you know?

C: (I) didn't know.

A: (You) didn't know?

A: I didn't know."

Conclusion

503. In respect of this aspect of Mdm. Cynthia Chen's account of events, we are satisfied that it followed a pattern: initial false denials, followed by obfuscation peppered with protestations of an inability to remember, which resulted in grudging acceptance of her participation in the face of being confronted with documentary evidence, such as cheques and WeChat messages. Even then, she was quick to resile from what was initially acceptance of her conduct and role.

Sale of two apartments in Shatin: movement of the proceeds

504. In her witness statement, Mdm. Cynthia Chen said:⁵⁶⁸

"... after selling our previous properties in Shatin in 2015, Winson took part of the sale proceeds to the mainland China for investment (i.e. making unsecured private loans to Madam Cheung). The activities of providing unsecured loan facilities to borrowers who could not meet the PRC's banking requirements on loans and interest rates higher than those offered by the PRC banks was commonly known as "民間貸款" (private loans) in the mainland China. In late 2016, given Winson's opinion of the trend of value of Renminbi and the Hong Kong land property market, Winson and I had decided to take the fund back to Hong Kong for purchasing landed properties in Hong Kong as better investment. I hereby adopt my First S.183 Return, and paragraph 3 of my Second S.183 Return. I also rely on the content of Winson's second S.183 Return dated 9 June 2020..."

⁵⁶⁸ Core Bundle 2; pages 181-182, paragraph 32.

Mdm. Cynthia Chen's relationship with Mdm. Cheung

505. Of her relationship with Mdm. Cheung, in her oral evidence-in-chief, Mdm. Cynthia Chen said:⁵⁶⁹

“I’m actually not close with Mdm Cheung. I’ve only met her once, and I believe that I couldn’t recognise her if I see her again. ... and she is a friend of my husband, Mr Chim, of Shanghai.”

I. Commission's Notice to Mdm. Cynthia Chen - s. 183 of the Ordinance: 16 March 2020

506. In a Notice from the Commission, dated 16 March 2020, Mdm. Cynthia Chen had been required to provide specific information in respect of what was said to be, “... the sales proceeds of the property owned by you and Mr. Chim Chor Yue in Mainland China (“Property”)”⁵⁷⁰. Amongst the information sought was, “(p) Supporting documents showing the acquisition and disposal of the Property”. It is common ground that in fact the property was in Hong Kong.

Mdm. Cynthia Chen's Reply to the Notice: 17 April 2020

507. In the reply to the Notice filed by Li & Lai on behalf of Mdm. Cynthia Chen, dated 17 April 2020, the information provided included:⁵⁷¹

“7. The address of the Previous Properties is Flats B & C, 15/F, Block 1, Chevalier Garden, No. 2 Hang Shun Street, Shatin, New Territories in Hong Kong.”

508. By reference to the attached Land Register records⁵⁷², it was asserted that:

- “(a) Mr. Chim Chor Yue and I as joint tenants acquired Flat B of the Previous Properties... as joint tenants on 13 May 2009 at HK\$1,800,000.00;
- (b) We as joint tenants acquired Flat C of the Previous Properties...on 15 May 2009 at HK\$1,800,000.00;
- (c) We sold Flat B of the Previous Properties ... on 15 May 2015 at HK\$3,980,000.00;
- (d) We sold Flat C of the Previous Properties... on 15 May 2015 at HK\$4,420,000.00.”

⁵⁶⁹ Transcript; 9 January 2025, page 17.

⁵⁷⁰ Exhibits Bundle 10A, pages 5645-5648.

⁵⁷¹ Exhibits Bundle 10A, page 5691.

⁵⁷² Exhibits Bundle 10A, pages 5663-5688.

509. No other supporting documents showing the acquisition and disposal of the Previous Properties was provided.

II. Commission's Notice to Mdm. Cynthia Chen - s. 183 of the Ordinance: 28 April 2020

510. By a Notice, dated 28 April 2020, Mdm. Cynthia Chen was required by the Commission to:⁵⁷³

- “(a) please explain the purpose of each highlighted fund deposit/withdrawal in Appendix 2 and Appendix 3 respectively; and
- (b) please provide every contemporaneous document that supports your explanation(s) given in response to item (a) above.”

Appendix 2: Joint Account with Hang Seng Bank of Mdm. Cynthia Chen and Mr. Chim

511. Appendix 2 was comprised of copies of highlighted account statements of the Joint Bank Account of Mr. Chim and Mdm. Cynthia Chen at HSBC for the period on and between 31 December 2015 and 28 February 2017:⁵⁷⁴

- (i) Deposits to the account from Mr. Chim's account at HSB on and between 15 November 2016 to 27 January 2017 were marked in blue
- (ii) Withdrawals made in favour of Mdm. Cynthia Chen to her personal bank account with HSB on and between 15 November 2016 and 28 February 2017 were marked in yellow.

Appendix 3: Mdm. Cynthia Chen's HSB account

512. Appendix 3 was comprised of copies of highlighted account statements for Mdm. Cynthia Chen's personal account with HSB on and between 9 December 2015 and 9 June 2017:

- (i) Deposits from either Mr. Wen Lide or the Joint Bank Account of Mr. Chim and Mdm. Cynthia Chen on and between 15 November 2016 and 28 February 2017 were marked in blue.⁵⁷⁵

⁵⁷³ Exhibits Bundle 10A, page 5722.

⁵⁷⁴ Exhibits Bundle 10A, pages 5730-5751.

⁵⁷⁵ Exhibits Bundle 10A, pages 5752-5807.

Mdm. Cynthia Chen's Reply to the Commission's Notice: Li & Lai, dated 9 June 2020

513. The reply to the Notice filed by Li & Lai on behalf of Mdm. Cynthia Chen, dated 9 June 2020⁵⁷⁶, attached a, “copy of Appendix 2 with the numbering from J01 to J39 manually marked thereon”, apparently matching the entries marked in blue and yellow on Appendix 2 by the Commission. Also attached was a copy of Appendix 3, “with the numbering from C01 to C32 manually marked thereon.”

514. Paragraph 3 of the Reply, on which Mdm. Cynthia Chen said she specifically relies, stated:

“3. The purpose of transaction J01, J04, J05, J07, J13, J21, J27 and J33:

- a. In 2015, my husband Mr. Chim Chor Yue and I as joint tenants sold our previous properties in Flats B & C, 15/F, Block 1, Chevalier Garden, No. 2 Hang Shun Street, Shatin, New Territories in Hong Kong.
- b. After that, my husband took the sale proceeds to the mainland China for investment. The investment was private loans (民間貸款) made to one Madam Cheung in the mainland China.
- c. In 2016, my husband took back the fund from mainland China to Hong Kong through his personal bank account. He thus transferred the same to our joint account.
- d. *Supporting documents for Question (b):* Please refer to the documents enclosed under my previous reply dated 17 April 2020.”

Mdm. Cynthia Chen's second record of interview

515. In her records of interview, Mdm. Cynthia Chen made no mention at all of a loan to Mdm. Cheung, let alone a loan of RMB 3,200,000. On the contrary, the account that she did give is wholly inconsistent with her subsequent account in her witness statements, Replies to the Commission and her oral evidence. The following exchange took place in her second record of interview:⁵⁷⁷

“A: You are saying that you sold the apartment in 2015?

⁵⁷⁶ Exhibits Bundle 10A, pages 5820-6031.

⁵⁷⁷ Witness Evidence Bundle 3; pages 1424-1426, counter #s 1623-1630.

C: Yes, yes. It was for accommodation, now we are renting. We had some money at the time, that is, in the mainland.

A: That is, you moved proceeds from selling the apartment to the mainland?

C: I don't think 'move' is the right word, but I don't remember how it went there. I mean, at times with friends, you know that many things were related to money...

A: That is, you took the money there for investment or what?

C: We wanted to invest in something at that time, then...

A: The investment didn't come through?

C: To be honest, no-- it's more like we didn't do much investment."

516. The transactions identified in Mdm. Cynthia Chen's reply, namely transfers of money to the Joint Account, may be summarised as follows:

Transfer type	Transfer date	Amount HK\$	J #
ATM TR.	15 Nov 16	121,768.00	J01
ATM TR.	19 Nov 16	200,000.00	J04
ATM TR.	19 Nov 16	200,000.00	J05
ATM TR.	23 Nov 16	400,000.00	J07
ATM TR.	29 Nov 16	796,000.00	J13
ATM TR.	19 Dec 16	700,000.00	J21
Fm. Chim Chor Yue	10 Jan 17	700,000.00	J27
Fm. Chim Chor Yue	10 Jan 17	700,000.00	J33
	TOTAL	3,817,768.00	

517. The eight above transactions constitute eight of the nine transactions identified by Mr. Fordham of transfers from Mr. Chim's HSB account to the Joint Account he held together with Mdm. Cynthia Chen in the period 15 November 2016 to 27 January 2017.⁵⁷⁸

⁵⁷⁸ Expert Evidence Bundle 7; page 1471, paragraph 5.2.3. Note (b).

Mdm. Cynthia Chen's explanation of the purpose of deposits and transfers

- (i) *15 November 2016: transfer of HK\$30,664.63 from Mr. Wen's account to Mdm. Cynthia Chen's account*

518. Of the purpose of the transfer of HK\$30,664.63 from Mr. Wen's account to Mdm. Cynthia Chen on 15 November 2016 (C01), it was asserted:⁵⁷⁹

“2. The purpose of transactions C01:

- a. Mr. Wen Lide told my husband Mr. Chim Chor Yue that he wanted to exchange the balance in his Hong Kong bank account to Renminbi, my husband then gave my personal bank account number to Mr. Wen for receipt of Mr. Wen's Hong Kong dollars.
- b. *Supporting documents for Question (b):* Since Mr. Wen and my husband agreed on the above arrangement by phone, no documents are available.”

- (ii) *Withdrawals from the Joint Account and related transfers to the personal account of Mdm. Cynthia Chen at HSB: 15 November 2016 to 28 February 2017.*

519. In her Reply Mdm. Cynthia Chen addressed the purpose of multiple withdrawals from the Joint Account with related transfers to her personal bank account at HSB in the overall period on and between 15 November 2016 and 28 February 2017.⁵⁸⁰ She asserted that many of those transfers were related to expenses arising from the purchase of property, including:

- a Workshop at Wah Lok Industrial Centre (“Wah Lok Property”);
- a Car Park at Garden Rivera, Shatin (“Carpark 82 Property”);
- another Car Park at Garden Rivera, Shatin (“Carpark 104 Property”);
- two Motor Cycle Parking Spaces at Monte Vista, Shatin (“MCPS M19 Property” and “MCPS M20 Property”).

III. Commission's Notice to Mr. Chim - s. 183 of the Ordinance: 16 March 2020

520. In a Notice from the Commission, dated 16 March 2020, Mr. Chim had been required to provide specific information in respect of what was said to be, “... the sales proceeds of the

⁵⁷⁹ Exhibits Bundle 10A; page 5821, paragraph 2.

⁵⁸⁰ Exhibits Bundle 10A; pages 5822-5829, paragraphs 4-28.

property owned by you and Ms. Cynthia Chen in Mainland China (“Property”)⁵⁸¹. Amongst the information sought was, “(p) Supporting documents showing the acquisition and disposal of the Property”. As noted earlier, it is common ground that, in fact, the property was in Hong Kong.

Mr. Chim’s Reply to the Commission’s Notice: Li & Lai 17 and 21 April 2020

521. In his Reply to the Commission, Mr. Chim replicated the description of the acquisition and sale of Flat B and Flat C as described in Mdm. Cynthia Chen’s reply, set out earlier.⁵⁸² Enclosed with the Reply were copies of the same Land Register records provided in her Reply by Mdm. Cynthia Chen.

IV. Commission’s Notice to Mr. Chim - s. 183 of the Ordinance: 28 April 2020

522. In the Commission’s Notice to Mr. Chim, dated 28 April 2020, it was asserted:⁵⁸³

“(a) in respect of the money paid by Mr. Lam Wai Ho to you (Appendix 1), you have stated the following:

- the money came from Mr. Wen Lide in exchange for your Renminbi funds in Mainland China (“Renminbi Funds”) i.e. you paid the equivalent amount to Mr. Wen Lide in Renminbi; and
- the Renminbi Funds came from the sales proceeds of your property in Hong Kong (“Sales Proceeds”)

(i) how did you transfer the Sales Proceeds to Mainland China?

(ii) what type of investments had you made in Mainland China by using the Renminbi Funds, and what were the rate of return of those investments?

(iii) how did Mr. Wen Lide communicate with you in relation to the exchange of Renminbi Funds (i.e. by WeChat, Whatsapp, phone call, in person discussion, etc.)?

(iv) please provide every contemporaneous document that supports your answers given in response to items (a)(i)-(iii) above;

⁵⁸¹ Exhibits Bundle 10B; pages 6032-6046.

⁵⁸² Exhibits Bundle 10B, page 6049, paragraph 6.

⁵⁸³ Exhibits Bundle 10B, pages 6109-6110.

- (b) please explain the purpose of each highlighted fund deposit/withdrawal in Appendix 2 and Appendix 3 respectively; and
- (c) please provide every contemporaneous document that supports your explanation (s) given in response to item (b) above.”

Appendix 2: Mr. Chim’s Hang Seng Bank account - marked deposits from Mr. Lam Wai Ho and withdrawals transferred to Mdm. Cynthia Chen’s account

523. Appendix 2 was described as being account statements of Mr. Chim’s bank account with Hang Seng Bank for the period on and between 30 December 2015 and 27 January 2017.⁵⁸⁴

- (i) Deposits into the account by the six cheques drawn on Mr. Lam’s Hang Seng Bank account were marked in blue.
- (ii) Withdrawals of monies transferred to the Joint Account of Mdm. Cynthia Chen and Mr. Chim with Hang Seng Bank were marked in yellow.

Appendix 3: Joint Account with Hang Seng Bank of Mdm. Cynthia Chen and Mr. Chim

524. Appendix 3 was described as being the bank statements of the Joint Bank Account of Mdm. Cynthia Chen and Mr. Chim in the period on and between 31 December 2015 and 28 February 2017.⁵⁸⁵

- (i) Deposits, from the personal bank accounts of either Mdm. Cynthia Chen or Mr. Chim, made in the period on and between 15 November 2016 and 27 January 2017, were marked in blue.
- (ii) Withdrawals resulting in deposits into Mdm. Cynthia Chen’s personal account in the period 15 November 2016 to 28 February 2017, were marked in yellow.

Mr. Chim’s Reply to the Commission’s Notice: Li & Lai 9 June 2020

Reply to (a)(i): how were Sales Proceeds transferred to Mainland China?

525. In reply to the Commission’s question of how the Sales Proceeds were transferred to the Mainland, on behalf of Mr. Chim, Li & Lai stated:⁵⁸⁶

⁵⁸⁴ Exhibits Bundle 10B, pages 6118-6146.

⁵⁸⁵ Exhibits Bundle 10B, pages 6147-6168.

⁵⁸⁶ Exhibits Bundle 10B, page 6182.

“Reply: I travelled to Mainland China for work frequently, and I brought cash with me to Mainland China on many occasions when I travelled to Mainland China.

1. As far as I could recall, I transferred the Sales Proceeds to Mainland China mainly in the following three ways:-
 - a. by bringing cash with me to Mainland China: I travelled to Mainland China for work frequently. I withdrew cash out of the Sales Proceeds from the bank account, and brought cash with me to Mainland China on some occasions when I travelled to Mainland China.
 - b. by exchanging money with my business friends in the Mainland China: I and/or my wife transferred part of the Sales Proceeds in Hong Kong dollars to my business friends, and they paid me equivalent amounts of Renminbi in cash in the Mainland China;
 - c. by exchanging money in legal money exchange companies: I and/or my wife transferred part of the Sales Proceeds to legal money exchange companies in Hong Kong for exchange of Renminbi. However, I cannot remember whether I then collected cash in Renminbi from the legal money exchange companies, or whether I have instructed the money exchange companies to transfer the sum to specific bank account in the mainland China.
2. I cannot remember the respective amounts of Sales Proceeds transferred to the Mainland China by each of the above three ways.”

Reply to (a)(ii): type of investments made in Mainland China using Renminbi Funds; rate of return?

526. In reply to the question of what type of investments had been made in Mainland China, it was stated:⁵⁸⁷

“Reply: The investment involved was private loan (民間貸款). I lent the fund to one madam Cheung (張文瑜女士) on 7 to 8 occasions. I could not remember the exact number of occasions. The interest rate was around 1% to 1.5% per month but I could not remember the exact interest rate.”

Inconsistencies - Mr. Chim's Reply: record of interview

⁵⁸⁷ Exhibits Bundle 10B, page 6183.

527. Having been asked in his record of interview if he had any “investment experience”, and having denied that he invested in stocks or other properties, Mr. Chim denied having any investment, adding, “(We) don’t have any investment yet, no, not at the moment, right.”⁵⁸⁸ Subsequently, in the context of the use of the proceeds of the sale of the two flats in Hong Kong, Mr. Chim said, “I made investment in the Mainland. That is, not investment. That is, it means (I) was looking at how our funds were working, right.”⁵⁸⁹ Having been asked, “after you sold the property, you said you invest it?”, Mr. Chim replied “... sometimes in the Mainland, you know, the interest rate is very high. So we usually don’t have any records.” He denied that the monies were deposited in a bank for interest, adding “Well, some friends, well, maybe they themselves... might have borrowed money at higher interest rates. So we were investing in that regard. Well, sometimes we would do that, right huh.”⁵⁹⁰

528. The almost incoherent stream of consciousness that were his answers in the record of interview stand in stark contrast to the simple assertion in his reply to the Commission that he lent money to madam Cheung on 7 to 8 occasions.

Reply to (a)(iii): how did Mr. Wen and Mr. Chim communicate?

529. In reply to the question of how Mr. Wen Lide had communicated with him in relation to the exchange of Renminbi funds, it was stated:⁵⁹¹

“Reply:

1. I can recall that the first time when Mr. Wen Lide suggested to exchange his Hong Kong dollars with my Renminbi funds, he called me by phone directly.
2. Our subsequent communication was mainly by phone and sometimes by face-to-face discussion in mainland China when I travelled there for work.
3. Mr. Wen Lide and I did not communicate to each other by emails.
4. As far as I can recollect, we have seldom if not never communicated on this topic by instant messengers such as WeChat and Whatsapp....”

Reply to (a)(iv): provision of contemporaneous supporting documentation of replies to (a)(i)-(a)(iii)

⁵⁸⁸ Witness Evidence Bundle 5; pages 2097-2098, counter #s 333-342.

⁵⁸⁹ Witness Evidence Bundle 5; page 2224, counter #1236.

⁵⁹⁰ Witness Evidence Bundle 5; pages 2227-2228, counter #s 1255-1258.

⁵⁹¹ Exhibits Bundle 10B, page 6183.

530. Of the request to provide “...every contemporaneous document that supports your answers”, it was stated:⁵⁹²

“Reply:

1. There were loan agreements between Madam Cheung and me, but I have returned the originals of the loan agreements to Madam Cheung for her to discard them when all loans were cleared.
2. I remember that I have made photocopy of the loan agreement(s). I am still trying to find them out from my residence, but I cannot locate it up to present. Due to lapse of time, I cannot confirm whether I have discarded photocopy when I moved house.
3. The relevant communication between me and Madam Cheung was mainly by meeting in person in the mainland China and by phone. The phone number of Madam Cheung was 139-0160-7777.
4. The relevant communication between me and Mr. Wen Lide was mainly by meeting in person in the mainland China and by phone. The phone number of Mr. Wen Lide was 136-0170-1818.”

Absence of contemporaneous documents

531. Mr. Chim provided no contemporaneous documents that supported the assertions in his Reply to question (a)(i), as to how the Sales Proceeds were transferred to Mainland China, in particular that Mr. Chim had withdrawn, “...cash out of the Sales Proceeds from the bank account”. Clearly, that was susceptible of support from contemporaneous bank Advices and Account Statements. Similarly, no supporting contemporaneous documents were provided that evidenced, “exchanging money in legal money exchange companies” or “exchanging money” with business friends in the Mainland. Equally, there were no supporting documents that Mr. Chim had “lent the fund to one madam Cheung (張文瑜女士) on 7 to 8 occasions.”

Inconsistencies - Mr. Chim’s Reply: record of interview

532. In his record of interview the following interchange ensued with Mr. Chim, as to the existence of records of his investments in the Mainland:⁵⁹³

⁵⁹² Exhibits Bundle 10B, pages 6183-6184.

⁵⁹³ Witness Evidence Bundle 5; page 2226, counter #s 1247-1248.

“A: So you (should) have some records, in fact, (to show) your investment in Mainland. Don’t you have (such) records? You still needed take out some money.

C: No records, we don’t have (records).”

Clearly, that account is inconsistent with his Reply, in which he asserted that there were such records, namely loan agreements between Mdm. Cheung and himself, photocopies of which he had made and for which he was still searching.

Reply to (b): Mr. Chim’s Hang Seng Bank account - marked deposits from Mr. Lam Wai Ho and withdrawals transferred to Mdm. Cynthia Chen’s account

533. In responding to the question posed by the Commission, as to the purpose of the transactions, which had been marked in colour by the Commission on Appendix 2, the bank account statements of the account of Chim Chor Yue with Hang Seng Bank, Mr. Chim added a sequential alphanumeric code 1 to 14, designated by the letter ‘W’ to identify both the relevant deposits into Mr. Chim’s account and the withdrawals that result in transfers to Mdm. Cynthia Chen’s account.⁵⁹⁴

534. Of the deposits that had been so marked:

W01: 14 November 2016	QUICK CHEQUE DEPOSIT	HK\$450,000;
W05: 21 November 2016	QUICK CHEQUE DEPOSIT	HK\$800,000;
W07: 28 November 2016	QUICK CHEQUE DEPOSIT	HK\$796,000;
W09: 14 December 2016	CHEQUE DEPOSIT	HK\$700,000;
W11: 3 January 2017	QUICK CHEQUE DEPOSIT	HK\$700,000;
W13: 25 January 2017	QUICK CHEQUE DEPOSIT	HK\$650,000

it was asserted:⁵⁹⁵

“a. These represented the fund from Mr. Wen Lide exchanged by my Renminbi in the mainland China.

b. In around 2016, Madam Cheung owed me money, and she would repay to me in Renminbi. Since there was a decreasing trend on the currency exchange rate of Renminbi to Hong Kong Dollars and I opined that Renminbi would continue

⁵⁹⁴ Exhibits Bundle 10B, pages 6189-6195.

⁵⁹⁵ Exhibits Bundle 10B, pages 6184-6185.

depreciating, I planned to transfer the Renminbi fund to Hong Kong so that my family could acquire some land properties in Hong Kong for investment instead.

- c. Mr. Wen Lide told me that he had around 4 million Hong Kong dollars which was kept in Mr. Lam Wai Ho's bank account in Hong Kong for an intended purchase of Hong Kong land properties. However he decided to transfer the fund back to the mainland China for other investment. I could not recall exactly whether he decided after learning about the tax and procedures involved in purchasing Hong Kong properties by non-Hong Kong resident.
- d. Therefore, Mr. Wen suggested that I could exchange my Renminbi fund owed by Madam Cheung with his Hong Kong dollars held by Mr. Lam.
- e. I informed Madam Cheung that the loan be repaid to me via Mr. Wen, then Madam Cheung and Mr. Wen liaise directly on the transfer method between them.
- f. Madam Cheung repaid in a few instalments. When Mr. Wen received one instalment in Renminbi from Madam Cheung, Mr. Wen informed Mr. Lam to transfer an equivalent amount of Hong Kong dollars to me out of the Hong Kong dollars held by Mr. Lam for Mr. Wen, until all Hong Kong dollars held by Mr. Lam for Mr. Wen were used up. This explains the above deposits from Mr. Lam to my personal bank account.
- g. The amount owed by Madam Cheung to me was a bit higher than the amount held by Mr. Lam for Mr. Wen. In 2017 after the above deposits, on one occasion when I travelled to mainland China for work, Madam Cheung repaid the balance to me by cash, and I returned the original loan agreement to her for her to discard..."

535. The dates of the deposit of those cheques match the dates that the six cheques drawn on Mr. Lam's account that were paid to Mr. Chim's account with Hang Seng Bank to a total HK\$4,096,000, were cleared, as identified by Mr. Fordham.⁵⁹⁶ As noted earlier two of the cheques, each for a payment of HK\$700,000, were re-presented, after the initial payment was refused due to insufficient funds in the account.

Inconsistencies - Mr. Chim's Reply: record of interview

536. The assertion in Mr. Chim's Reply that, "Mr. Wen informed Mr. Lam to transfer an

⁵⁹⁶ Expert Evidence Bundle 7; page 1466, paragraph 4.2.3, Note (a).

equivalent amount of Hong Kong dollars to me out of the Hong Kong dollars held by Mr. Lam for Mr. Wen, until all Hong Kong dollars held by Mr. Lam for Mr. Wen were used up” is inconsistent with Mr. Chim’s account in his record of interview. There, he said that he collected cheques from Mr. Lam, which were signed but otherwise blank⁵⁹⁷ The payee and the amount of money on each cheque was written subsequently elsewhere, either by his wife or, in the case of one cheque, by himself.⁵⁹⁸ In answer to the question of how he knew what amount of money to stipulate in a cheque, he said, ...“This had to with my Mainland - how much I should give back, give to him in Renminbi.” He said, “...how much was signed had to do with how much Renminbi I gave him in the Mainland.”⁵⁹⁹

537. Mr. Lam’s account was that he signed blank cheques, which he handed over to Mr. Chim. Thereafter, he was not involved with Mr. Chim at all. As noted earlier, he was not aware of why two cheques were returned. He simply did not keep an eye on the account. Indeed, he said that he lost contact with Mr. Wen.⁶⁰⁰

Reply to (c): Appendices 2 and 3 - provide every contemporaneous document that supports your explanation(s)

538. In reply, it was asserted:⁶⁰¹

“h. Supporting documents for question (c): Please refer to my reply to question (a)(iv) above.”

The absence of supporting documentation

539. The written reply to the requirement to provide “...every contemporaneous document that supports your explanation(s)” namely a referral to the reply to question (a)(iv) was disingenuous. No documents had been provided in that Reply. It is to be noted that in Mr. Chim’s record of interview the following interchange ensued:⁶⁰²

“A: That is, there’s no record. You can’t give me any record to show you actually gave money to MAN Lai Tak?

C: (I) can’t give that, (I) can’t give that, because we...”

⁵⁹⁷ Witness Evidence Bundle 5; page 2220, counter #s 1213-1216.

⁵⁹⁸ Witness Evidence Bundle 5; pages 2219-2220, counter #s 1207-1212.

⁵⁹⁹ Witness Evidence Bundle 5; pages 2220-2221, counter #s 1213-1216.

⁶⁰⁰ Witness Evidence Bundle 17; page 10118, counter # 744.

⁶⁰¹ Exhibits Bundle 10B, page 6185.

⁶⁰² Witness Evidence Bundle 5; page 2221, counter #s 1221-1222.

Appendix 3

540. In responding to the question posed by the Commission, as to the purpose of the transactions that the Commission had marked in colours, in Appendix 3, the bank statements of the Joint Bank Account of Mdm. Cynthia Chen and Mr. Chim for the period on and between 31 December 2015 and 28 February 2017⁶⁰³, Mr. Chim marked copies of the bank statements with a sequential alphanumeric code, J01-J40.⁶⁰⁴

Transfer from Mdm. Cynthia Chen's account to the Joint Account on 15 November 2016

541. Of the transfer of HK\$30,654.63 on 15 November 2016 to the Joint Account (J40), from Mdm. Cynthia Chen's account with Hang Seng Bank (J40), it was asserted:⁶⁰⁵

“4. The purpose of transaction J40:

- a. Apart from the Hong Kong dollars held by Mr. Lam for Mr. Wen, Mr. Wen also told me that he had a balance of around HK\$30,000+ in his bank account in Hong Kong, and he would like to exchange the same to Renminbi. I then gave my wife's personal bank account number for receipt of his Renminbi.
- b. I paid Renminbi to Mr. Wen via Madam Cheung repaying the loan to Mr. Wen.
- c. After my wife receiving the said sum of HK\$30,000+ (or HK\$30,664.63 to be exact), she transferred the same to our joint account.
- c. (*sic*) *Supporting documents for question (c):* Please refer to the bank statements of my wife's personal bank account. Since the relevant communication between Mr. Wen and me was made by phone, no other documents are available.”

542. In replying, Mr. Chim asserted in respect of stipulated transactions (eight stipulated withdrawals from Mr. Chim's account at HSB and eight related deposits to the Joint Account):⁶⁰⁶

“3. The purpose of transactions ...

⁶⁰³ Exhibits Bundle 10B, pages 6147-6168.

⁶⁰⁴ Exhibits Bundle 10B, pages 6196-6203.

⁶⁰⁵ Exhibits Bundle 10B; page 6185, paragraph 4.

⁶⁰⁶ Exhibits Bundle 10B; page 6185, paragraph 3. Transactions: J01, J04, J05, J07, J13 J21, J27, and J33: W02, W03, W04, W06, W08, W10, W12 and W14.

- a. Since the deposits from Mr. Lam Wai Ho came from the Sale Proceeds of the Hong Kong properties, these were part of my family's assets. I thus transferred Mr. Lam's deposits from my personal bank account to the Joint Bank Account."

543. Of the other such stipulated transactions, namely 31 stipulated withdrawals from the Joint Account, he asserted:⁶⁰⁷

"4. The purpose of transactions ... :⁶⁰⁸

- a. My family purchased the land property at Workshop D 37 on 4/F, Wak Lok Industrial Centre (Phase II), ... and the balance of the purchase price on completion was HK\$2,835,000.00. While part of it was paid by mortgage loan, transaction J28 was a deposit of HK\$1,600,000 from the joint account to my wife's personal account, so as to settle the remaining balance of purchase price in the sum of around HK\$1.58 million by cheque out of her personal account...
- b. Other transactions were made by my wife for the purpose of discharging various family expenses or settling purchase price and expenses of the family's purchase of various carpark spaces and motor carpark spaces in Hong Kong."

544. Those 31 withdrawals from the Joint Account were matched by date and amount of money by deposits into the personal account of Mdm. Cynthia Chen with Hang Seng Bank. As noted earlier, in his report Mr. Fordham noted that 29 of those remittances were to a total of HK\$3,223,786.46.⁶⁰⁹

Mr. Chim's record of interview

(i) No mention of Mdm. Cheung or a loan of RMB 3,200,000

545. It is to be noted that nowhere in his record of interview, dated 14 November 2018, did Mr. Chim make any reference whatsoever to Mdm. Cheung, in particular he did not identify her as the person to whom he had lent RMB 3,200,000 on 1 June 2015.

⁶⁰⁷ Exhibits Bundle 10B; pages 6185-6186, paragraph 5.

⁶⁰⁸ Exhibits Bundle 10B; pages 6185-6186, paragraph 5. Transactions: J02, J03, J06, J08-J12, J14-J20, J22-J26, J28-J32 and J34-J39.

⁶⁰⁹ Expert Evidence Bundle 7; page 1475, paragraph 6.2.3. Note (a). Pages 1516-1517 - Appendix 8.

(ii) Investments: no records

546. He did mention that he had sold two properties in Chevalier Garden in Hong Kong, “Well it’s about four million or so”.⁶¹⁰ He said that was in either 2015 or 2016.⁶¹¹ In that context, he said, “I made investment in the Mainland. That is, not investment. That is, it means (I) was looking at how our funds were working, right.”⁶¹² As noted earlier, Mr. Chim said that he had no records of his investment in the Mainland.⁶¹³ Of his investments he explained:⁶¹⁴

“After I sold the property, well, sometimes it’s ... sometimes in the Mainland, you know, the interest rate is very high. So we usually don’t have any records.”

547. Mr. Chim denied the suggestion that he had put the money in the bank for interest, “Not at all, not at all. Well, some friends, well, maybe they themselves had... might have borrowed money at higher interest rates. So we were investing in that regard. Well, sometimes we would do that, right, huh.”⁶¹⁵ He denied the specific suggestion that he had lent the money to Mr. Wen. When it was suggested to him that he had lent the money to others, he said, “For our own (use), right, for our own (use).”⁶¹⁶ When the question was repeated, he repeated his answer. In answer to the question of whether he had received interest, he said “If (it) was lent, then there were some interests, right.”⁶¹⁷

548. In answer to the question of whether, “...all the money from selling the property” was recovered in the Mainland and taken back to Hong Kong, he said:⁶¹⁸

“It had to be, it had to be. Because if it wasn’t, I couldn’t have given (the money) to MAN Lai Tak, before he gave me Hong Kong dollars in return right.

Mdm. Cynthia Chen’s supplementary statement

549. In a supplementary statement, dated 27 November 2024, Mdm. Cynthia Chen attached a document she described as a true copy of the photocopy of the Memorandum of Loan, which statements she invited the Tribunal to receive.⁶¹⁹

⁶¹⁰ Witness Evidence Bundle 5; page 2223, counter #s 1230-1234.

⁶¹¹ Witness Evidence Bundle 5; page 2224, counter # 1238.

⁶¹² Witness Evidence Bundle 5; page 2224, counter # 1236.

⁶¹³ Witness Evidence Bundle 5; page 2226, counter #s 1246-1248.

⁶¹⁴ Witness Evidence Bundle 5; page 2228, counter #1256.

⁶¹⁵ Witness Evidence Bundle 5; page 2228, counter #1258.

⁶¹⁶ Witness Evidence Bundle 5; page 2247, counter #1404.

⁶¹⁷ Witness Evidence Bundle 5; page 2248, counter #1408.

⁶¹⁸ Witness Evidence Bundle 5; pages 2248-2249, counter #s 1409-1414.

⁶¹⁹ Tribunal Miscellaneous Bundle, pages 42-50.

Discovery of the Memorandum of Loan

550. Of the circumstances in which the document had been found, it was asserted that, “the copy was ultimately located in my uncle’s home in Shanghai, China.” It was explained that one of the homes in which Mdm. Cynthia Chen’s mother lived was in Shanghai, “...in her brother (i.e. my uncle)’s home, and she still keeps some of my personal chattels that I rarely used (such as books, old prizes, old certificates etc.) in my uncle’s home. During my recent preparation of the case for the coming substantive hearing, while my mother become (sic) aware that I was searching for a handwritten note, my mother told me that she found it from one of my books in my uncle’s home. My mother came to Hong Kong and gave me the said Photocopy on around 23 November 2024.”⁶²⁰ In cross-examination, Mdm. Cynthia Chen confirmed that she had not made a photocopy of the Memorandum of Loan.⁶²¹

551. The manuscript document stated:⁶²²

“Memorandum of Loan

Borrower Cheung Man Yu (transliteration)

Identity Card Number 31010619610292449 (sic)

now borrow from Chim Chor Yue Home Return Permit Number H07975759

Renminbi Three Million and Two Hundred Thousand Dollars only

[320000] annual interest rate at 12.5% loan period is 18 months

Borrower (sd.) Cheung Man Yu (transliteration)

Date of Loan 1 June 2015”

Mdm. Cynthia Chen’s oral evidence

552. In the context of Mr. Chim’s assertion in his Reply, dated 9 June 2020, “I lent the fund to one madam Cheung (張文瑜女士) on 7 to 8 occasions”, in answer to the question of whether the Memorandum of Loan was the only time that Mr. Chim made a private loan to Mdm. Cheung, Mdm. Cynthia Chen said in her oral evidence-in-chief:⁶²³

⁶²⁰ Core Bundle 2; page 191, paragraph 10.

⁶²¹ Transcript; 15 January 2025, page 48.

⁶²² Tribunal Miscellaneous Bundle, page 50A.

⁶²³ Transcript; 9 January 2025, pages 17-18.

“I’m not sure, as the only thing I know is that the joint fund that we owned together was lent to Mdm Cheung for the first time. But for his own fund or his own money, I’m not sure.”

Photocopy: original Memorandum of Loan

553. Subsequently, when asked if the photocopy of the Memorandum of Loan was identical to the original document, Mdm. Cynthia Chen said, “Yes, I can confirm it because I did see the original before.”⁶²⁴

554. Of the circumstances of the loan being made, Mdm. Cynthia Chen said that her husband said that such a loan had a “...higher interest rate than other banks.”⁶²⁵ She gave her consent to the loan. She did so after she had done her own research. A private loan in the Mainland was the usual practice, supported by the Chinese Government. She explained, “After all, it is my funds, and I have to be cautious.”⁶²⁶

555. In cross-examination, Mdm. Cynthia Chen said that there was only one original signed copy of the Memorandum of Loan. She was not there when it was signed. After the money had been borrowed, but on a date that she could not remember, her husband brought the Memorandum of Loan back to Hong Kong and showed it to her. He said that he would keep it, since he would be the one settling the loan. It was kept in their home, until her husband took it back to Shanghai.⁶²⁷

No attempts to locate Mdm. Cheung

556. Mdm. Cynthia Chen readily acknowledged that the Sales Proceeds of the two properties in Chevalier Garden, Shatin became the “major part” of the assets of Mr. Chim and herself. Nevertheless, she said that she had not tried herself, nor had she asked Mr. Chim, to try to locate Mdm. Cheung. She had not asked Mr. Chim to do that for the proceedings in the Tribunal. She had no idea if Mr. Chim himself had tried to do so.⁶²⁸

557. In answer to questions from the Chairman, she said that she did not know Mdm. Cheung’s address nor did she have, or ever have, any means of contacting her directly. She understood that Mdm. Cheung ran a small business, perhaps related to her husband’s industry,

⁶²⁴ Transcript; 13 January 2025, page 30.

⁶²⁵ Transcript; 9 January 2025, pages 16-17.

⁶²⁶ Transcript; 9 January 2025, pages 19-20.

⁶²⁷ Transcript; 15 January 2025, pages 37-39.

⁶²⁸ Transcript; 15 January 2025, pages 40-47.

and that the loan was for “some project”. However, she had no idea of the nature of the project.⁶²⁹

Mr. Wen’s assistance in the transfer/exchange of Renminbi in the Mainland for Hong Kong dollars in Hong Kong

Mdm. Cynthia Chen’s witness statement

558. Having made specific reference to her reliance on the contents of Mr. Chim’s reply to the Commission, dated 9 June 2020, in her witness statement Mdm. Cynthia Chen asserted:⁶³⁰

“33. At that time, we understood from Wen (roughly but without much details) that Wen had previously transferred around HK \$4 million into Lam’s bank account in Hong Kong for his intended purchase of a landed property in Hong Kong, but Wen then decided not to proceed with the purchase. As such, the said sums remained in Lam’s bank account and Wen needed to transfer them back to the mainland China.

34. As such, Winson informed Madam Cheung to repay the private loans (which was in Renminbi) by instalments to Wen in the mainland China, and for any instalment received by Wen he would in turn direct Lam to transfer equivalent sums in Hong Kong dollars out of Wen’s monies held by Lam at that time to Winson through bank accounts in Hong Kong. I would rely on the content of Winson’s Second S.183 return...”.

Mdm. Cynthia Chen’s oral evidence

559. In her oral evidence-in-chief, Mdm. Cynthia Chen said:⁶³¹

“So for the amount owed by [Mdm. Cheung], part of it was owned by me as it was the joint fund of me and Mr Chim.... I remember my husband messaged and told me that he wanted to bring the money back to Hong Kong. So he has further explained to me the reason why he would like to bring the money back to Hong Kong. The first thing is he is afraid of the exchange rate of RMB will be lower. And the second reason was that he has intention to buy, invest for buildings, car park lots. Real estate, investment....

⁶²⁹ Transcript; 15 January 2025, pages 51-52.

⁶³⁰ Core Bundle 2; page 182, paragraphs 33-34.

⁶³¹ Transcript; 9 January 2025, page 36.

So when Mr Chim told me that, I agreed to that. And therefore, Mr Wen... will help with the remittance and exchange of the funds.”

Repayment of the loan

560. Of the repayment of the loan to Mdm. Cheung, Mdm. Cynthia Chen said:⁶³²

“I’m not exactly sure about the exact date, but my husband told me that he would need to go back to Shanghai to bring back the original IOU note to return to the borrower as the loans had been cleared. And that’s why I am in acknowledgement of all the principles (sic) and interest were collected.”

561. In cross-examination, Mdm. Cynthia Chen said her husband, “...told me that Mr Wen had a sum of money in Mr Lam’s account, and he would like to get it back. And then he said that he would exchange the money repaid by Mdm. [Cheung] and will give it back to us.”⁶³³

562. Mdm. Cynthia Chen acknowledged that, given that she had written on some cheques drawn on Mr. Wen’s HSBC account that were then credited to his Shenwan account, she knew that Mr. Wen had a Hong Kong bank account. Nevertheless, in face of the suggestion that, with that knowledge, she would have become suspicious on being told that Mr. Wen put HK\$4 million into Mr. Lam’s account in order to buy Hong Kong property, she said, “I did not ask”.⁶³⁴

563. She denied the suggestion that the monies transferred in the six cheques drawn on Mr. Lam’s account with Hang Seng Bank, in which Mr. Chim was payee, had nothing to do with a loan arrangement with Mdm. Cheung. She said:⁶³⁵

“No, I don’t agree. Why not related? My husband made it very clearly that this sum was from the money exchange.”

564. In face of the suggestion that the monies were related to Mr. Wen’s trading in Dan Form shares in August and September 2016, she said:⁶³⁶

“During money exchange, I had no idea at all about that. I only knew about the matter when I went for the interview in 2018... If I had known that he had touched my

⁶³² Transcript; 9 January 2025, page 21.

⁶³³ Transcript; 15 January 2025, page 83.

⁶³⁴ Transcript; 15 January 2025, page 85.

⁶³⁵ Transcript; 15 January 2025, page 86.

⁶³⁶ Transcript; 15 January 2025, page 86.

company's shares, I would not have entered into any monetary transactions or dealings with him."

565. Of the suggestion that Mr. Wen's trading in Dan Form shares was as a result of her providing, "...some information to him about your own company", she said, "I definitely disagree."⁶³⁷

566. In response to the suggestion that, "These communications between you and Mr Wen ... during this time were concealed by you," Mdm. Cynthia Chen said, "I disagree. That never happened, so there is no issue about concealing the information." Similarly, Mdm. Cynthia Chen disagreed with the suggestion that she had had, "an interest in the investment of Mr Wen in the Dan Form shares". In response to the suggestion that the cheque drawn on her account, dated 24 August 2016, for HK\$49,541 was part of that "interest" in the investment of Mr. Wen, Mdm. Cynthia Chen asserted that was an exchange of monies with Mr. Wen arranged by Mr. Chim. She disagreed with the suggestion that there were other payments to Mr. Wen's account in which she had "covered the track" of the provenance of the monies.⁶³⁸

⁶³⁷ Transcript; 15 January 2025, page 86.

⁶³⁸ Transcript; 15 January 2025, pages 93-95.

CHAPTER 13

MR. CHIM: ANSWERS AND EXPLANATIONS

The weight to be placed on Mr. Chim's answers and explanations: (i) in his record of interview: and (ii) the two Replies to the Commission in response to Notices, pursuant s.183 of the Ordinance.

567. Mdm. Cynthia Chen asserted specifically in her witness statement, dated 29 August 2024, that she relied on the content of Mr. Chim's return to the Commission's Notice pursuant to s.183 of the Ordinance, dated 9 June 2020.⁶³⁹ Although it is clear from her evidence that not only do they continue to cohabit as a married couple but also that they had reviewed the documents served by the Commission together in September and October 2024, in preparation for the hearing, Mdm. Cynthia Chen did not call him or seek to call him to give evidence in these proceedings. Indeed, she confirmed, in an answer to the Chairman at the conclusion of her evidence, that she did not even ask him to give evidence in these proceedings.⁶⁴⁰ We are satisfied that he was available to give evidence.

Mdm. Cynthia Chen's reliance on assertions by Mr. Chim in his Reply to the Commission, dated 9 June 2020.

568. It is clear that the important matters on which Mdm. Cynthia Chen places reliance on the assertions made by Mr. Chim in his Reply, dated 9 June 2020⁶⁴¹, include:

- of the Sales Proceeds: that Mr. Chim withdrew cash from the bank account and brought it to the Mainland when he travelled there; that Mr. Chim and/or his wife transferred part of those monies to his business friends in exchange for payment of Renminbi in the Mainland; that Mr. Chim and/or his wife transferred monies to legal money exchange companies in exchange for Renminbi;
- that Mr. Chim lent (some of) those monies to Mdm. Cheung, evidenced by loan agreement(s) a photocopy of which he made;
- that, on Mr. Chim's instructions, Mdm. Cheung made repayments of the loan(s) to Mr. Wen, on receipt of which Mr. Wen informed Mr. Lam to transfer an equivalent amount in Hong Kong dollars to Mr. Chim from monies held by Mr. Lam for Mr. Wen; in execution of that arrangement, HK\$4,096,000 were transferred to Mr. Chim's HSB

⁶³⁹ Core Bundle 2; page 182, paragraphs 32 and 34.

⁶⁴⁰ Transcript; 16 January 2025, page 23.

⁶⁴¹ Exhibits Bundle 10B, pages 61181-6202.

account by six cheques drawn on the HSB account of Mr. Lam, which monies Mr. Chim transferred to the Joint Account and from which monies were transferred to Mdm. Cynthia Chen's account.

The nature of Mr. Chim's Reply to the Commission, dated 9 June 2020

569. There is no dispute that in critical areas the assertions made by Mr. Chim in his Reply to the Commission, dated 9 June 2020, were unsupported by documentary or oral evidence, other than by the belatedly discovered alleged photocopy of the Memorandum of Loan, dated 1 June 2015, and the unsupported assertions and oral evidence of Mdm. Cynthia Chen. Further, Mr. Chim's assertions were not tested by any cross-examination whatsoever, let alone in cross-examination in oral testimony on oath, in particular in these proceedings.

Mr. Chim's Record of Interview

570. By contrast to his two Replies to the Commission, Mr. Chim's answers and explanations in his record of interview were the subject of at least some questioning, in which he was confronted with some relevant documentary evidence. On the other hand, the Tribunal has not had the opportunity of hearing Mr. Chim give evidence on oath, being cross-examined by counsel for the Commission and posing its own questions to Mr. Chim. The Tribunal has approached an examination of Mr. Chim's answers and explanations in his record of interview mindful of those considerations, and by having regard to whether his answers and explanations were consistent or inconsistent with other evidence.

The written Closing Submissions of the Commission

571. Of Mr. Chim's Reply to the Commission, dated 9 June 2020, in his written Closing Submissions, Mr. Lee submitted that the Tribunal, "...shall attach little or no weight to it, when Winson Chim could have, but has chosen not to, come forward and give evidence."⁶⁴² He added that, on Mdm. Cynthia Chen's case, "...Winson Chim is the person with the most intimate knowledge of the 'private loan' arrangement, yet Winson Chim is not testifying without any good reason or explanation being put forward". Those submissions resonate with the submissions that Mr. Lee had made on the issue of the weight to be attached to Mr. Chim's Reply when canvassed first of all at the outset of Mdm. Cynthia Chen's evidence.⁶⁴³ In those circumstances, he invited the Tribunal to draw an adverse inference against Mdm. Cynthia

⁶⁴² The Commission's written Closing Submissions, paragraph 142.

⁶⁴³ Transcript; 9 January 2025, pages 8-9.

Chen on this issue.

572. In the Commission's Reply Submissions, the Tribunal was invited to note that Mdm. Cynthia Chen did not have any personal knowledge of the arrangement between Mr. Chim and Mdm. Cheung. Further, no particulars were provided by Mr. Chim of "when, where and how" he lent the monies to Mdm. Cheung. There was no documentary evidence to support the assertion that the Sales Proceeds of the two properties were transferred to Mainland China.⁶⁴⁴

The written Closing Submissions on behalf of Mdm. Cynthia Chen

573. Having asserted that Mdm. Cynthia Chen relied on Mr. Chim's Reply, dated 9 June 2020 to establish that she knew Mr. Chim had given those answers and believed them to be, "Winson Chim's understanding to the matters therein", it was submitted in Mdm. Cynthia Chen's written Closing Submissions that, "...there can be no issue of impropriety of attaching full weight to Winson Chim's s183 return for the abovementioned purposes."⁶⁴⁵

574. In the Reply submissions on behalf of Mdm. Cynthia Chen, it was contended that the Commission had failed to establish a "case to answer" against Mdm. Cynthia Chen and that it would be impermissible to draw an inference adverse to her on the basis that she had not called Mr. Chim in her case.⁶⁴⁶

A consideration of the submissions

575. There is no doubt that Mr. Chim, not Mdm. Cynthia Chen, was the person able to speak with first-hand knowledge first of the transfer of the Sales Proceeds of the two properties to the Mainland and secondly, the circumstances of the loan to Mdm. Cheung. Similarly, he, not Mdm. Cynthia Chen, was able to speak with first-hand knowledge, first to the arrangements reached for the repayment of the loan by Mdm. Cheung to Mr. Wen and secondly, to the arrangement with Mr. Wen and its implementation for the exchange of the Renminbi received by Mr. Wen in the Mainland into Hong Kong dollars, provided through Mr. Lam's HSB account to Mr. Chim's HSB account in Hong Kong.

576. We are satisfied that Mdm. Cynthia Chen was fully aware of that, the more so having regard to the Commission's submissions at the commencement of her evidence as to first, who possessed first-hand knowledge of the relevant events and secondly, Mr. Chim's availability to

⁶⁴⁴ The Commission's Reply Submissions, paragraph 5 (3) and (4).

⁶⁴⁵ Mdm. Cynthia Chen's written Closing Submissions, paragraphs 37(3) and 38.

⁶⁴⁶ Mdm. Cynthia Chen's Reply Submissions, paragraph 16.

be called as a witness. We have no doubt whatsoever that she was aware of the obvious greater value and weight to be attached by the Tribunal to first-hand evidence of the matters to which Mr. Chim spoke. He was clearly a witness that it was reasonably to be expected that Mdm. Cynthia Chen would call. On the other hand, we are satisfied that she knew that, if called to give evidence of his multiple assertions in his Reply, dated 9 June 2020, Mr. Chim would be subjected to rigorous cross-examination which, given the multiple inconsistencies in his various accounts, very likely he would not withstand.

577. It was not suggested at any stage that Mr. Chim was not available to give evidence in these proceedings.

578. In the result, Mr. Chim's bare assertions in the Reply, are untested by questioning in any way whatsoever, not least as to inconsistencies in the account he had given in his record of interview, but also in particular by a general cross-examination under oath in these proceedings.

Conclusion

579. In all the circumstances, we are satisfied that, mindful of the considerations set out above, Mdm. Cynthia Chen made a deliberate, considered decision not to call Mr. Chim to give evidence in these proceedings, but rather to seek to rely on his unsupported bare assertions in the Reply.

Prima facie case

580. We are satisfied that the evidence of Mr. Fordham, based as it was on the material in the Hearing Bundles available to the Tribunal, established a simple *prima facie* case that a significant amount of the total HK\$3,223,786.46 that was deposited in Mdm. Cynthia Chen's account on and in between 21 November 2016 and 28 February 2017 had their provenance in the proceeds of the sale of Dan Form shares in Mr. Wen's Shenwan account on and in between 29 September 2016 and 26 October 2016. In turn, those shares had been bought in Mr. Wen's Shenwan account on and in between 24 August 2016 and 19 September 2016. Mdm. Cynthia Chen had made a deposit of HK\$49,541 on 24 August 2016 into Mr. Wen's Shenwan account, which monies had been used in the purchase of some of those Dan Form shares. On the face of the evidence, Mdm. Cynthia Chen was a beneficiary of Mr. Wen's trading in Dan Form shares. That begged the obvious questions: Why? In return for what?

581. The assertions made by Mr. Chim in his Reply, dated 9 June 2020, provided the basis to suggest another explanation for the provenance of those monies.

Conclusion

582. In the result, we do not accept Mr. Chim's assertions by themselves in his Reply as truthful, in particular as to: his transfer of the Sales Proceeds of the two flats at Chevalier Garden to the Mainland, which monies he lent to Mdm. Cheung; that he reached an arrangement with Mr. Wen, which was implemented, that the repayment of the loan which, on his instructions Mdm. Cheung paid to Mr. Wen in Renminbi in the Mainland, was exchanged with Hong Kong dollars and paid to Mr. Chim at Mr. Wen's directions by Mr. Lam.

CHAPTER 14

MR. WEN LIDE: TRADING IN OTHER SECURITIES ACCOUNTS

Grand Investment

(i) Mr. Wen Lide's account

583. At the material time, in addition to his securities account with Shenwan, Mr. Wen had a securities account with Grand Investment (Securities) Limited ("Grand Investment") in the United Centre in Queensway. That account had been opened on 22 July 2003 with its previous iteration, namely Winlink Securities Company Limited. No third party had been authorised to operate the account.⁶⁴⁷

584. Throughout 2016 up and until 31 August 2016 the account held 160,000 shares in Innovative Phar, Stock Code 00399, and a holding of about 3 million shares in Extrawell Phar, Stock Code 00858, which varied in the total holding according to his trading. In addition, in February 2016, 200,000 shares of SFCE, Stock Code 01165 were acquired which were subsequently disposed of in March 2016 and bought back in June 2016.⁶⁴⁸

Trading in Dan Form shares: 6 September 2016 - 4 October 2016

(i) 6 September 2016: Buy

585. A total of 250,000 Dan Form shares were acquired at HK\$1.96 and HK\$1.97 per share on 6 September 2016, at a total cost of about HK\$493,000. On the same day 2,000,000 Extrawell shares were sold for about HK\$498,000.

(ii) 29 September 2016 and 4 October 2016: Sell

586. On 29 September 2016, 150,000 Dan Form shares were sold at HK\$2.69 per share for a total of about HK\$402,000. On 4 October 2016, the balance of the holding of Dan Form shares, namely 100,000 shares, were sold at HK\$2.68 per share for a total of about HK\$267,000. The purchase and sale of Dan Form shares had proved very profitable.

(ii) Mdm. Li Qian's account

587. An account in the name of Mdm. Li Qian was opened with Grand Investment on 20 June 2007. Her husband, Mr. Wen Lide, was stipulated to be the person authorised to operate

⁶⁴⁷ Exhibits Bundle 1A, pages 242-246.

⁶⁴⁸ Exhibits Bundle 1A, pages 352-375.

the account.⁶⁴⁹ In the period 1 January 2016 to 31 May 2016 the account held Hilong (Stock Code 01623) shares and Extrawell Phar (Stock Code 00858) shares. On 18 January and 5 February 2016, 900,000 and 100,000 Extrawell Phar shares were sold respectively, leaving a balance of 2,000,000 shares. On 1 March 2016, 100,000 Hilong shares were sold, leaving a balance of 100,000 Hilong shares in the account.⁶⁵⁰ Apart from the order by telephone on 12 September 2016, all the other orders placed by Mr. Wen for Mdm. Li Qian in the Dan Form shares from August to October 2016 were placed by Internet.⁶⁵¹

Trading in Dan Form shares: 29 June 2016 - 18 August 2016

(i) 29 June 2016: Buy

588. On 29 June 2016, 100,000 Dan Form shares were acquired for a total of about HK\$196,000. HK\$100,000 was deposited in the account on the following day.

(ii) 14 July 2016 and 18 August 2016: Sell

589. On 14 July 2016, 50,000 Dan Form shares were sold for a total of about HK\$96,000. On 18 August 2016, the balance of 50,000 Dan Form shares were sold for a total of about HK\$96,000.⁶⁵²

Trading in Dan Form shares: 24 August 2016 - 29 September 2016

(iii) 24 August 2016 and 12 September 2016: Buy

590. On 24 August 2016, a total of 50,000 Dan Form shares were bought at HK\$1.63 per share to a total of about HK\$81,000. By an Order placed by Mr. Wen Lide by telephone at 09:14 on 12 September 2016, 50,000 Dan Form shares were bought at HK\$1.97 per share, to a total of about HK\$98,000.⁶⁵³

(iv) 29 September 2016: Sell

591. On 29 September 2016, all 100,000 Dan Form shares held in the account were sold at HK\$2.69 per share to a total of about HK\$268,000.⁶⁵⁴ The purchase and sale of Dan Form shares had proved profitable.

⁶⁴⁹ Exhibits Bundle 5A, pages 2388-2397.

⁶⁵⁰ Exhibits Bundle 5A, pages 2414-2425.

⁶⁵¹ Exhibits Bundle 5A, pages 2388-2389.

⁶⁵² Exhibits Bundle 5A, pages 2424-2426.

⁶⁵³ Exhibits Bundle 5A, pages 2388 and 2430.

⁶⁵⁴ Exhibits Bundle 5A, page 2430.

The nature of trading in Dan Form shares - Grand Investment accounts: Mr. Wen's Shenwan account

592. It is clear that the nature of the trading in Dan Form shares in the two Grand Investment accounts was quite different from the trading in Mr. Wen's Shenwan account. The purchase of 250,000 Dan Form shares on 6 September 2016 in Mr. Wen's Grand Investment account was self-funded, namely by the sale of 2,000,000 of the 2,500,000 Extrawell Phar shares held in the account.

593. The purchase in Mdm. Li Qian's Grand Investment account of 100,000 Dan Form shares on 29 June 2016 was in part funded by the deposit of HK\$100,000 the following day and in part by margin finance. A transfer to the bank account number of Grand Investment, 002-5-429481,⁶⁵⁵ of HK\$100,000 was described in Mr. Wen's HSBC account statement for 30 June 2016.⁶⁵⁶

594. The purchase of 50,000 Dan Form shares on 24 August 2016 was in part funded by the sale of 100,000 Hilong shares on the same day and in part by margin finance. The cost of the purchase of 50,000 Dan Form shares on 12 September 2016 was in very large part settled by the sale on the same day of 120,000 Extrawell shares and the sale on 13 September 2016 of 200,000 Extrawell shares.

595. By contrast, a total of 3,120,000 Dan Form shares were purchased in Mr. Wen's Shenwan account on and between 24 August 2016 and 19 September 2016. The purchasing was aggressive and sustained in the face of the generally increasing cost of buying Dan Form shares, from a price per share of about HK\$1.65 on 24 August 2016 to HK\$2.34 on 19 September 2016. On 24 August 2016, no fewer than 1,070,000 Dan Form shares were purchased. In the three days of 5, 6 and 7 September, a total of 900,000 Dan Form shares were purchased, at a price per share that rose from about HK\$1.79 to about HK\$2.10. In part, the purchases of Dan Form shares in that overall period were funded by multiple deposits of no less than HK\$1,596,000 in cash to Mr. Wen's HSBC account, from which payments by cheque drawn on that account were made to his Shenwan account.

Use/Distribution of the proceeds of the sale of Dan Form shares

596. The proceeds of the profitable sale of Dan Form shares on 4 October 2016 in Mr. Wen's

⁶⁵⁵ Exhibits Bundle 5A, pages 2388-2389, 2441 and 2447.

⁶⁵⁶ Exhibits Bundle 2, page 1183.

Grand Investment account were used to repay margin finance which had been increased in the purchase of the SFCE shares on 4 October 2016, leaving a balance of HK\$25,445.14. That balance was reduced to HK\$445.14 per payment by cheque of HK\$25,000 on 19 October 2016. As Mr. Fordham noted a cheque payment was made of HK\$25,000 on 19 October 2016 from an account of Grand Investment to Mr. Wen's savings account with HSBC. By purchases of Extrawell Phar shares in late October and early to mid November 2016 the holding of Extrawell shares in that account was partially restored to 1,800,000 shares.⁶⁵⁷ Similarly, following the sale of the Dan Form shares in Mdm. Li Qian's Grand Investment account, purchases were made in October 2016 of a total of 320,000 Extrawell shares, thereby restoring the holding to its previous balance on 11 September 2016.⁶⁵⁸

597. By contrast, as described earlier, a significant part of the proceeds of sale of the Dan Form shares in Mr. Wen's Shenwan account ultimately found their way to the bank account of Mdm. Cynthia Chen with HSB.

Conclusion

598. We are satisfied that it is to be inferred from all the evidence that, the accounts of Mr. Wen and Mdm. Li Qian in Grand Investment having the hallmarks of personal securities accounts operating at modest levels of activity, the accounts were accounts in which only Mr. Wen and his wife had an interest. They were and were operated as their personal accounts.

599. By contrast, we are satisfied that it is to be inferred from all the evidence, in particular the trading activity, provenance of the deposits and the distribution of the sale proceeds of Dan Form shares in Mr. Wen's Shenwan account, that the account was not operated only for Mr. Wen's interests, rather other parties also had interests, including Mdm. Cynthia Chen.

⁶⁵⁷ Exhibits Bundle 1A, pages 370-373.

⁶⁵⁸ Exhibits Bundle 5A, pages 2430-2432.

CHAPTER 15

A CONSIDERATION OF THE SUBMISSIONS

Negotiations with G-Resources and the Potential Purchaser for the sale of Mr. Dai's shares

(i) 23 June - 27 June 2016

600. Having been informed by Mr. Dai on 23 June 2016 of the potential acquisition of his holding of Dan Form shares⁶⁵⁹, Mdm. Cynthia Chen was involved in the making of an Announcement, undersigned by Mdm. Chen, by Dan Form on 24 June 2016 of the suspension of trading in the shares of Dan Form pending an Announcement, “which is inside information in nature”. Then, she attended a meeting at Dan Form’s offices on 27 June 2016 with Mr. Dai and his advisers, at which a proposed price of HK\$2.60 per share was discussed, albeit not agreed. We are satisfied that Mdm. Cynthia Chen knew that to be the case. There followed a second meeting later that day with Mr. Dai, his advisers and those representing the Potential Purchaser, including G-Resources and Clifford Chance.

(ii) 28 June 2016

601. The Announcement by Dan Form, undersigned by Mdm. Chen on 28 June 2016 confirmed that a Potential Purchaser had offered to buy the entire interests of Mr. Dai in Dan Form, namely 36.45% of the issued shares of the company, the parties had commenced formal negotiation and, if the acquisition resulted, the Potential Purchaser would be required to make a General Offer to acquire all shares of the company. For his part, in his ‘Oral Statement to the Commission’, dated 11 June 2021, Mr. Dai said:⁶⁶⁰

“Ms. CHEN is the primary employee of Dan Form Holdings responsible for drafting the said announcement, and I also reminded her that all matters related to Potential Acquisition need to be kept confidential.”

(iii) 29 June 2016

602. On 29 June 2016, Clifford Chance circulated a draft Sale and Purchase Agreement through Mdm. Cynthia Chen to Mr. Dai.⁶⁶¹ Mr. Dai said that it stipulated a price of HK\$2.50 per share.⁶⁶² We are satisfied that Mdm. Cynthia Chen was aware of that information at the

⁶⁵⁹ Witness Evidence Bundle 11A; pages 6085-14, paragraph 4(c).

⁶⁶⁰ Witness Evidence Bundle 11A; pages 6085-17, paragraph 4(f).

⁶⁶¹ Exhibits Bundle 1, page 75.

⁶⁶² Witness Evidence Bundle 11A; page 6085-18, paragraph 4(g).

time.

603. Clearly, with the knowledge that she possessed of the negotiations, in particular as company secretary of Dan Form, in the midst of ongoing negotiations for the acquisition of Mr. Dai's shares with the inevitable requirement, if the negotiations were successful, of the making of a General Offer, Mdm. Cynthia Chen was constrained in her ability of to trade in Dan Form shares in her own account at that time, lest it be subjected to scrutiny. Further, we are satisfied that Mdm. Cynthia Chen knew that to be the position.

Mdm. Cynthia Chen's Shenwan account: (i) sale of shares; (ii) disbursement; and (iii) use of proceeds

(i) 28 June 2016- Sale of shares

604. On 28 June 2016, Mdm. Cynthia Chen sold all her shares in her Shenwan account for HK\$259,898.53, resulting in an account balance of HK\$264,545.59 on the settlement date of 30 June 2016.

(ii) Disbursement of funds

605. On 28 June 2016, Mdm. Cynthia Chen transferred HK\$264,436.05 out of the account balance of HK\$264,545.59 to her Hang Seng Bank account. The Hang Seng Bank account statement of Mdm. Cynthia Chen stated that, HK\$264,421.05 was received on 30 June 2016.⁶⁶³ After the deposit of those monies the balance was HK\$271,904.89.

(iii) Use of funds

(a) 29 June 2016 - purchase of Dan Form shares

606. On 29 June 2016, Mr. Wen purchased 160,000 Dan Form shares in his Shenwan account at a cost of HK\$314,728.42, with a settlement date of 4 July 2016. In part settlement of the costs of Mr. Wen's purchase of 160,000 Dan Form shares on 29 June 2016, HK\$300,000 was transferred to Mr. Wen's Shenwan account on 4 July 2016 from Mr. Simon Yuen's HSBC account. The source of the fund from Mr. Simon Yuen's account appears to be the transfer from Mr. Wen's HSBC account to Mr. Simon Yuen's account in the same amount of HK\$300,000 on the same day.

⁶⁶³ Exhibits Bundle 7, page 3696.

Provenance of the monies

607. Two HK\$50,000 deposits were made from Mr. Chim's account with HSB to Mr. Wen's HSBC account, described in the bank statement as having been made on 4 July 2016. A deposit of EUR 24,000 on 29 June 2016 to Mr. Wen's HSBC account was converted into Hong Kong dollars and partially withdrawn to the account of Grand Investment on 30 June 2016 (EUR24,000 was exchanged into HK\$204,854.40 at the transfer/conversion rate of around EUR/HK\$ 8.5356).

608. Mdm. Cynthia Chen transferred HK\$100,000 to Mr. Chim's Hang Seng Bank account, described in the bank statement as having been made on 4 July 2016. The balance in Mr. Chim's bank account before the transfer of the two amounts of HK\$50,000 each to Mr. Wen's account and the transfer of HK\$100,000 from Mdm. Cynthia Chen's account was the same, namely HK\$741. (There was also a transfer of HK\$50,000 from Mr. Chim's Hang Seng Bank account to the Joint Account, and a transfer of the same amount from the Joint Account back to Mr. Chim's Hang Seng Bank account, both described in the bank statements as having been made on 4 July 2016 with no net change as a result.) Clearly, HK\$100,000 of the total settlement of HK\$314,728.4 for the purchase of the 160,000 Dan Form shares had its provenance in Mdm. Cynthia Chen, with Mr. Chim acting as an intermediary.

Conclusion

609. We are satisfied that this conduct evidenced powerfully the connection between Mdm. Cynthia Chen and the acquisition of Dan Form's shares in Mr. Wen's Shenwan account. That is its only relevance.

610. For completeness, it is to be noted that on 5 July 2016, Mdm. Cynthia Chen remitted HK\$156,737.00 to her Joint Account with Mr. Chim. Following that deposit, there was a balance of HK\$198,138.76 in the Joint Account. After the deposit of the proceeds of the sale of shares in Mdm. Cynthia Chen account there was no other deposit until after the remittance of 5 July 2016.

(b) 27 July 2016 - purchase of 50,000 Dan Form shares.

611. On 27 July 2016, Mr. Wen purchased 50,000 shares of Dan Form at a cost of HK\$97,851.26. The settlement for Mr. Wen's purchase of those Dan Form shares was funded by the deposit of a cheque drawn on his HSBC account for HK\$100,000 (#773663) into his Shenwan account at Standard Chartered Bank on 28 July 2016, described in the Shenwan

statement with an effective date of 29 July 2016. A photograph of that cheque, with the account details written on the obverse side, was found on Mr. Chim's mobile telephone. In context, it is to be noted that in a WeChat message sent at 9:52 on 28 July 2016 Mdm. Lucy Tsui provided Mdm. Cynthia Chen with the details of Mr. Wen's Shenwan account.

Provenance of the monies

612. Of the provenance of the monies used to settle the purchase of those 50,000 Dan Form shares, it is to be noted that:

- (i) Mr. Wen's HK\$100,000 cheque (#773663) was funded by two HK\$50,000 cash deposits made into Mr. Wen's HSBC account on 28 July 2016.
- (ii) On the same day, there was a transfer of HK\$100,000 from the Joint Account of Mr. Chim and Mdm. Cynthia Chen to Mr. Chim's account. That was followed by a withdrawal in cash of HK\$100,000 from Mr. Chim's account.
- (iii) As noted earlier, on 5 July 2016, Mdm. Cynthia Chen remitted HK\$156,737.00 into her Joint Account with Mr. Chim. Those monies had their provenance in the proceeds of the sale of Mdm. Cynthia Chen's shares in her Shenwan account. Other than a transfer of HK\$532 on 19 July 2016 from Mdm. Cynthia Chen to the Joint Account and the credit of HK\$0.73 interest on 20 July 2016 there were no other deposits to the Joint Account before the transfer to Mr. Chim's account of HK\$100,000 on 28 July 2016. There were no other transfers from Mdm. Cynthia Chen to her Joint Account with Mr. Chim or Mr. Chim's account between 4 July and 28 July 2016. There was also no other transfer to Mr. Chim's account between 4 July and 28 July 2016.

Conclusion

613. In all the circumstances, we are satisfied that the two deposits of HK\$50,000 in cash into Mr. Wen's HSBC account on 28 July 2016 had their provenance in the HK\$100,000 cash withdrawn from Mr. Chim's account on the same date and, in turn, a very large part of those monies had their ultimate provenance in the proceeds of the earlier sale of shares in Mdm. Cynthia Chen's Shenwan account.

614. The coming into existence of 'inside information', known to Mdm. Cynthia Chen, in respect of the acquisition of Mr. Dai's Dan Form shares through ASM lay weeks in the future.

Coincidence of time of selling and buying of Dan Form shares in Mr. Wen's Shenwan account and Mdm. Li Qian's Grand Investment account

(i) 18 August 2016

615. The coincidence of the sale of all the 210,000 Dan Form shares in Mr. Wen's Shenwan account and all the 50,000 Dan Form shares held in Mdm. Li Qian's Grand Investment account on 18 August 2016 is to be noted. On 19 August 2016, Dan Form made an Announcement in the name of Mdm. Cynthia Chen that it had been informed by Mr. Dai that on 18 August 2016 the negotiations for the possible acquisition of his Dan Form shares had been terminated.

(ii) 24 August 2016

616. The coincidence of the resumed purchase of Dan Form shares in Mr. Wen's Shenwan account and in Mdm. Li Qian's account with Grand Investment on 24 August 2016 is also to be noted.

617. On the other hand, also to be noted is the quite different magnitude of buying of Dan Form shares on 24 August 2016 in the two accounts: the purchase of 1,070,000 Dan Form shares at a cost of HK\$1,769,710.45, plus commission and charges, in Mr. Wen's Shenwan account; and the purchase of 50,000 Dan Form shares at a cost of HK\$81,759.43 in Mdm. Li Qian's Grand Investment account respectively. Also, whilst buying of Dan Form shares, to the exclusion of trading in other shares, continued apace on an almost daily basis in Mr. Wen's Shenwan account, no more Dan Form shares were bought in Mdm. Li Qian's account until 50,000 Dan Form shares were bought on 12 September 2016. Further, trading occurred in that account in other shares: on 24 August 2016, 100,000 SFCE shares were bought and 100,000 Hilong shares were sold and, on 12 and 13 September 2016, a total of 220,000 Extrawell Phar shares were sold.

Funding arrangements: Mr. Wen's HSBC account

(i) 23 August 2016

618. In advance of that active and frequent trading in Dan Form shares in Mr. Wen's Shenwan account, arrangements had been made to fund the purchases. On 23 August 2016, two remittances to Mr. Wen's HSBC account, one of HK\$999,985 and the other of HK\$491,681 were made by Opulent Pretty Travel Limited. In addition, on 23 August 2016 a transfer was made to Mr. Wen's account from an account in the name of Choi Yuk Chor of

HK\$464,576.

619. In a reply, dated 15 January 2020, to a s.183 Notice from the Commission, Ms. Wu Ka Yu said that she was the person-in-charge of Yuan Tong Money Exchange.⁶⁶⁴ It was operated by Happy Mate Limited, trading as Yuan Tong Money Exchange, which held a licence for ‘Operating Money Service’ pursuant to s. 30 of Chapter 615.⁶⁶⁵ Ms. Wu explained that she was instrumental in those deposits being made to Mr. Wen Lide’s HSBC account to a total of HK\$1,956,272 (before bank charges were deducted). That sum of money represented the exchange of RMB 1.7 million and was the result of the exchange rate of Renminbi to Hong Kong dollars she agreed with Mr. Chen Hong. He contacted her and said that he was instructed by Mr. Wen Lide to make that money exchange and remittance to his HSBC Bank account. Mr. Chen Hong provided a copy of Mr. Wen Lide’s Chinese Identity Card, together with his telephone number, namely 13601701818.

620. As agreed with Mr. Chen, three tranches of Renminbi, to a total of RMB 1.7 million were paid into three different bank accounts in the Mainland on 23 August 2016:

- (i) RMB 400,000 to the account of Cai Xuchu or Choi Yuk Chor (Cantonese) with China Minsheng Bank, Shenzhen branch;
- (ii) RMB 600,000 to the account of Li Jing, with the Bank of Communications Co., Limited, Shenyang branch; and
- (iii) RMB 700,000 to the account of Chen Zirong with China Construction Bank, Xiamen branch.

621. Ms. Wu said that, having received copies of bank receipts of the remittance of monies to each of the three bank accounts from Mr. Chen Hong and having confirmed receipt with the individual beneficiaries of those accounts, she gave instructions for the transfer to the HSBC account of Mr. Wen of HK\$1,000,000 and HK\$491,696. None of those receipts stipulated the provenance of the respective remittance and only one was dated, namely the ‘transfer and remittance’ of RMB 700,000 to Chen Zirong’s China Construction Bank account, dated 12:17:40 on 23 August 2016.

622. Those transfers, less bank charges, were made respectively through two bank accounts of Opulent Pretty Travel Limited which she said Yuan Tong Money Exchange had been

⁶⁶⁴ Exhibits Bundle 9B, pages 5530-5561.

⁶⁶⁵ Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap. 615.

previously authorised to use at least one of these accounts for such transactions. Opulent Pretty Travel Limited's sole shareholder, Ms. Ka Mei Lung, was in fact an employee of Yuan Tong Money Exchange. Ms. Ka Mei Lung said that on Ms. Wu's instructions she had established Opulent Pretty Travel Limited in April 2016 and opened bank accounts with Hang Seng Bank and DBS Bank, the use and operation of which bank accounts she handed over to Ms. Wu.⁶⁶⁶

623. Thirdly, Ms. Wu said that she had asked Mr. Choi Yuk Chor to transfer HK\$464,576, apparently the Hong Kong dollar equivalent, to the HSBC account of Mr. Wen.

(ii) 24 August 2016

624. The total amount of those deposits into Mr. Wen's HSBC account, namely HK\$1,956,242, was the amount stipulated on a cheque drawn on Mr. Wen's HSBC account paid into Mr. Wen's Shenwan account on 24 August 2016. A cheque drawn on the account of Mdm. Cynthia Chen, dated 24 August 2016, for HK\$49,541 was also deposited into Mr. Wen's Shenwan account. In one of her accounts on the issue Mdm. Cynthia Chen said that she was involved in writing the details in both cheques. However, in a later account she said that she did not remember whether she wrote the cheque in the amount of HK\$1,956,242. As evidenced by the photographs that he took of the latter cheque and the Hong Kong Dollar Deposit slips related to the deposits of those two cheques, Mr. Chim was involved in depositing those cheques to Mr. Wen's Shenwan account at the same time and place on 24 August 2016. Clearly, in conducting themselves in that way Mr. Chim and Mdm. Cynthia Chen were working together as a team.

625. The apparent recruitment of Mr. Lam by Mr. Wen as an investor in the consortium, resulting in him drawing a cheque for HK\$144,217, also dated 24 August 2016, which was deposited into Mr. Wen's Shenwan account, evidences the fact that contributions were solicited and received from different sources for purposes of purchasing Dan Form shares. We are satisfied that Mr. Lam was no more than an investor, there being no need to provide him with the information, known to Mdm. Cynthia Chen and Mr. Wen, of the negotiations between ASM and Mr. Dai for the purchase of his holding of Dan Form shares, albeit that subsequent to his payment of those monies his services were deployed significantly in the disbursement of the proceeds of the sale of Dan Form shares, importantly in concealing the provenance of some of those monies ultimately in Mdm. Cynthia Chen's account.

⁶⁶⁶ Exhibits Bundle 9B, pages 5475-5477.

Trading in Mr. Wen's Shenwan account - 24 August 2016

626. At the same time that the funds were being deposited into Mr. Wen's Shenwan account, Mr. Wen was actively trading in that account, as evidenced by the audio recordings of his conversations with Mdm. Lucy Tsui. On 24 August 2016, there were no less than nine separate occasions during the course of the day, from 10:02 to 14:56 when Mr. Wen placed orders with Mdm. Lucy Tsui for the purchase of Dan Form shares. It is apparent that Mr. Wen was aware of the prospective deposit of funds in his Shenwan account. At the outset, at 10:02, having placed an order to buy Dan Form shares, he referred to a deposit to be made in the afternoon of 1.9 something million, "I think there are two decimal places," made up of 1.95 million for one stock, and over 50,000, 49,000, a little over 40,000 for another stock. For her part, Mdm. Lucy Tsui said, "OK, tell me the total number on WeChat then, OK?"⁶⁶⁷

627. In a telephone conversation, which began at 13:54 on 24 August 2016. Mdm. Lucy Tsui informed him that, "...the money has been received". She referred to two transactions, namely one for, "1,956,242" and the other for, "49,541". She added that payment by cheque by a third party would be "very troublesome if it is discovered" and urged him to make payment with the new payee description, namely "SWSHK, a hyphen, ... Wen Lide" "Just like what I wrote to you on WeChat."⁶⁶⁸

[No WeChat messages between Mdm. Lucy Tsui and Mr. Wen are available to the Tribunal.]

628. Photographs of the two deposit slips of cheques drawn in those respective amounts were found on Mr. Chim's telephone in the WeChat photograph path at 11:26 on 24 August 2016.⁶⁶⁹

The nature of buying Dan Form shares in Mr. Wen's Shenwan account

629. The nature of Mr. Wen's orders to Mdm. Lucy Tsui to buy Dan Form shares is illustrated by exchanges in their telephone conversations on subsequent occasions. On 26 August 2016, having been told that the funds in the account to meet a purchase order were such that Mr. Wen was "already short of money", Mr. Wen responded, "Don't worry. Using up all the funds is exactly what I want to do, ha ha."⁶⁷⁰ Similarly, having placed an order to buy yet more Dan Form shares on 31 August 2016, Mr. Wen was told by Mdm. Lucy Tsui, "You've almost

⁶⁶⁷ Bundle of Audio Recording Transcripts, page 22.

⁶⁶⁸ Bundle of Audio Recording Transcripts, pages 39-40.

⁶⁶⁹ Witness Evidence Bundle 5, page 2592.

⁶⁷⁰ Bundle of Audio Recording Transcripts, page 60.

reached your limit. You basically used up your quota.”⁶⁷¹

5 September 2016

(i) Cash deposits to a total of HK\$534,000

630. On 3 and 4 September 2016 and throughout 5 September 2016 a total of eight separate deposits were made in cash to Mr. Wen’s HSBC account, to a total of HK\$534,000.

(ii) 450,000 Dan Form shares bought

631. There having been no purchases of Dan Form shares on 1 and 2 September 2016, buying of substantial quantities of Dan Form shares resumed on Monday, 5 September 2016.

632. The audio recordings described five separate conversations in which Mr. Wen placed orders with Mdm. Lucy Tsui to purchase Dan Form shares on 5 September 2016. At the outset, at 09:38 on 5 September 2016, in placing a purchase order for 50,000 Dan Form shares, he told her “I’ve received a cheque of over 500,000 today.”⁶⁷²

633. The photograph on Mr. Chim’s telephone in the WeChat path of the deposit slip evidencing the deposit into Mr. Wen’s Shenwan account of a cheque drawn on Mr. Wen’s HSBC account in the amount of HK\$534,000 showed that the deposit was made on 12:22 on 5 September 2016. Clearly, Mr. Wen was anticipating the deposit of those monies into his account.

Three cash deposits to a total of HK\$178,000 into Mr. Wen’s HSBC account

634. Relevant to the making of that cheque and its deposit into the account of Mr. Wen’s Shenwan account is the evidence of the photograph in the WeChat path of the HSBC deposit advices of the three deposits in cash, to a total of HK\$178,000, on 5 September 2016 made to Mr. Wen’s HSBC account, which monies were part of the monies made available to meet the cheque of HK\$534,000. Although Mr. Chim purported not to remember whether or not he had contacted Mr. Wen by WeChat in respect of these transactions, we are satisfied that he did so.

635. It is clear from those audio recordings that Mr. Wen was aware of the fact of the deposit or impending deposit of cheques into his Shenwan account. That is wholly consistent with Mr. Chim advising Mr. Wen of the deposit of funds into both his HSBC account and his

⁶⁷¹ Bundle of Audio Recording Transcripts, page 74.

⁶⁷² Bundle of Audio Recording Transcripts, page 76.

Shenwan account, as is suggested by the references to the storage of the photographs of those cheques in Mr. Chim's mobile telephone referring to a WeChat path.

Failure to cross-examine: unfairness

636. As noted earlier in Chapter 5, in her written Reply Closing Submissions Ms. Tse invited the Tribunal to ignore that evidence, complaining that the Commission had "...failed to put the said documentary exhibit" to Mdm. Cynthia Chen, "...at all during the inquiry" but now seeks to use it against her. In his written Closing Submissions, Mr. Lee had relied on that evidence as supporting the Commission's case against Mdm. Cynthia Chen generally, submitting that the "...purchase of the shares must be related to and funded by her in some disguised ways, and that is why the sale proceeds (or some extent of it) ended up in her account."

637. We do not accept Mr. Lee's submission that he was justified in not raising the matter at all with Mdm. Cynthia Chen, on the ground that it was her case generally that she had no knowledge of any specific dealings between Mr. Wen and Mr. Chim. It may well have been that it was to be anticipated that Mdm. Cynthia Chen's response to the suggestion that she knew of and was involved in the money dealings between Mr. Chim and Mr. Wen related to the purchase of Dan Form shares, in particular the three cash deposits to a total of HK\$178,000 on 5 September 2016, would have been met by disavowal of knowledge of any such dealings. Nevertheless, we are satisfied that it is an issue that ought to have been raised with Mdm. Cynthia Chen in cross-examination.

638. It is to be noted that the relevant material was available in the Hearing Bundles and explored in some detail in questions in the second record of interview of Mr. Chim. Clearly, that material was well known to Mdm. Cynthia Chen. The photographs of related banking documentation on Mr. Chim's mobile telephone included a photograph of the HK Dollar Deposit Slip of the deposit of the cheque drawn on her account, dated 24 August 2016, for the sum of HK\$49,541 in which Mr. Wen was the payee into his Shenwan account. Moreover, it is to be remembered that she specifically relied on Mr. Chim's detailed explanation in his second Return to the Commission, dated 9 June 2020, as part of her case.

639. Most importantly, we are satisfied that the complaint made on behalf of Mdm. Cynthia Chen that the unfairness visited on her by the failure of the Commission to cross-examine her on that issue resulted in depriving her of the opportunity to give her explanation or answer was met by the opportunity afforded to Mdm. Cynthia Chen to return, after the evidence had been

completed, written submissions made but before oral submissions began, to give evidence on that discrete point. The Commission did not object to the Chairman's invitation to Ms. Tse to permit Mdm. Cynthia Chen to give further evidence, if she so wished.

640. Significantly, Ms. Tse did not even attempt to identify any specific alleged unfairness that she suggested would enure to Mdm. Cynthia Chen in returning to continue her evidence on the discrete point at that juncture in the proceedings. Rather, in stating that Mdm. Cynthia Chen, "turned down the tribunal's invitation", Ms. Tse's said that Mdm. Cynthia Chen was "...well entitled take advantage of the perceived deficiencies of the commission's case against her." We are satisfied that there was no such unfairness.

Information about the negotiations for the acquisition of Mr. Dai's holding of Dan Form shares by ASM known to Mdm. Cynthia Chen

(i) 22 August 2016

641. We accept Mr. Brian Liu's evidence that, on 22 August 2016, on Mr. Kin Chan's instructions, he had contacted Mdm. Cynthia Chen by telephone and informed her that ASM was, "still keen to do the deal with them" but that, "\$3/share is a bit high", following which he and Mdm. Cynthia Chen had a conversation. In response, Mdm. Cynthia Chen said that the price "...will be "closer to \$3 than \$2", or Dai won't be interested to talk".⁶⁷³ Similarly, we accept Mr. Brian Liu's evidence that in a subsequent conversation with Mdm. Cynthia Chen on 22 August 2016 he had told her "...we can "talk about" \$2.5, subject to our proposed structure." In particular, we accept that Mdm. Cynthia Chen had responded by enquiring as to ASM's "flexibility" and had added that ASM, "...will probably need to increase "a bit more"."⁶⁷⁴ We are satisfied that her responses evidenced Mdm. Cynthia Chen's role as an informed and active participant in the negotiations.

(ii) 23 August 2016

642. Further, in an email sent by Mr. Kin Chan, at 6:51 pm on 23 August 2016, Mdm. Cynthia Chen was advised, "We are very keen to discuss the possibility of buying Mr. Dai's shares in Dan Form. Please rest assured that we have the financial resources to do the deal." Then, details of significant earlier deals concluded by ASM were described. The email concluded, "I am keen to see him ANY time on Sat September 10th or Sun September 11th."⁶⁷⁵

⁶⁷³ Transcript; 11 December 2024, pages 35-37.

⁶⁷⁴ Transcript; 11 December 2024, pages 37-39.

⁶⁷⁵ Core Bundle 3, page 40.

Mdm. Cynthia Chen acknowledged that she had read the email, informed Mr. Dai by printing it out and passing it on to Mr. Dai's secretary.⁶⁷⁶

(iii) 24 August 2016

643. By an email sent in reply at 9:54 am on 24 August 2016, Mdm. Cynthia Chen acknowledged receipt of Mr. Kin Chan's "information" and said that she would try her best to arrange a meeting with Mr. Dai.⁶⁷⁷ Finally, in an email to Mdm. Cynthia Chen, sent at 10:33 on 24 August 2016, Mdm. Cynthia Chen received confirmation of ASM's enthusiasm to conclude the proposed acquisition. Mr. Kin Chan wrote:⁶⁷⁸

"Shall we do DD while we wait for my meeting with Mr. Dai? I am willing to pay more than \$2.5/share. We have lots of [sincerity]. Our intention is very clear. We are keen to do a friendly deal if possible."

Conclusion

644. We are satisfied that, possessed of that information, Mdm. Cynthia Chen knew that the prospects of a successful conclusion to the negotiations had increased very significantly in the short period after Mr. Brian Liu and Mr. Kin Chan had renewed contact with her on the subject of acquiring Mr. Dai's controlling stake of Dan Form. The information was confidential and known only to the small circle of those involved in the negotiations, but at this stage, that information was not 'inside information'. Nevertheless, we are satisfied that it was Mdm. Cynthia Chen's knowledge of the significant increase in the prospects of a successful conclusion to the negotiations that was directly connected to the flurry of activity of trading in Dan Form shares in Mr. Wen's Shenwan account commencing on 24 August 2016 and continuing thereafter.

645. Given that Mr. Wen's Shenwan account was operated by his direct oral instructions to Mdm. Lucy Tsui, clearly it was necessary that Mdm. Cynthia Chen communicate to Mr. Wen her opinion, and the basis of her forming that opinion, of the increasingly promising negotiations, between ASM and Mr. Dai in respect of his holding of Dan Form shares, in order to secure Mr. Wen's cooperation and participation in trading in Dan Form shares in Mr. Wen's Shenwan account. We are satisfied that she did communicate that information directly or indirectly through Mr. Chim to Mr. Wen on or before 24 August 2016 and continued thereafter

⁶⁷⁶ Transcript; 10 January 2025, page 29. Transcript; 13 January 2025, page 52.

⁶⁷⁷ Core Bundle 1, page 124.

⁶⁷⁸ Core Bundle 1, page 100.

to provide him with information directly or indirectly through Mr. Chim of the developments in the negotiations.

2 September 2016 meeting at Dan Form's offices - Mr. Dai, Mr. Brian Liu and Mdm. Cynthia Chen

646. As we found earlier, we are satisfied that, in advance of the meeting in the offices of Dan Form of Mr. Dai, Mdm. Cynthia Chen and Mr. Brian Liu on the afternoon of Friday 2 September 2016, Mdm. Cynthia Chen read and knew the contents of the Proposal Letter sent by Mr. Brian Liu by email to her at 12:47 on 2 September 2016. Further, having been present at the subsequent meeting, we are satisfied that she knew the terms of the agreement reached between the parties, which terms are set out in Mr. Brian Liu's email of 3 September 2016 to Mr. Kin Chan, including the offer price of HK\$2.75 per share.

Conclusion

647. For the reasons that we have given earlier,⁶⁷⁹ we are satisfied that, possessed of that information, Mdm. Cynthia Chen became possessed of 'inside information'. Obviously the parties had not agreed on all the terms. But we are satisfied that the terms agreed on, notwithstanding the outstanding details that were yet to be agreed, were such that it was now a commercially realistic prospect that the transaction would occur. We are satisfied that Mdm. Cynthia Chen knew that and that she provided her opinion, and the factual basis for forming it, to Mr. Wen in order to secure his continued cooperation and participation in the trading in Dan Form shares in his Shenwan account. It is to be noted that the closing price of Dan Form shares on 2 September 2016 was HK\$1.72 per share. Clearly, there was a considerable opportunity to make profit on trading in Dan Form shares.

Cash deposits into Mr. Wen's HSBC account: 3 September - 10 September 2016

648. Following that meeting on 2 September 2016, there occurred a sustained pattern of the deposit of cash into Mr. Wen's HSBC account, to a total of HK\$1,596,000. That began on Saturday 3 September 2016 and continued each day up and until 10 September 2016. On every one of those days, cash, to the maximum limit of HK\$100,000, was deposited in cash machines. The flurry of orders placed by Mr. Wen with Mdm. Lucy Tsui to buy Dan Form shares on Monday, 5 September 2016 was matched by the flurry of cash deposits made on 3, 4 and 5 September 2016 into Mr. Wen's HSBC account to a total of HK\$534,000. As noted earlier,

⁶⁷⁹ Chapter 9, paragraph 332.

Mr. Chim's telephone contained photographs of bank deposit slips, evidencing deposits made to Mr. Wen's Shenwan account to a total of HK\$178,000 at 11:59, 12:03 and 12:04 on 5 September 2016. He gave no explanation as to why the bank counter deposit of HK\$78,000 was made at the Shatin Plaza Branch, whereas the two deposits of HK\$50,000 each were made at the Shatin Centre Shopping Arcade Branch. His claim, in his record of interview, not to remember the provenance of that amount of cash, HK\$178,000, is wholly implausible, and we reject it.

649. As Mr. Fordham noted, there was a pattern to the deposit of cash at machines and bank counters. They involved branches of banks that were close to one another. We are satisfied that they could be reached by the same person making the different deposits within the time at which those deposits were made. Further, as Mr. Fordham observed, the different tranches of cash deposits were reflected in the aggregate amount being stipulated in cheques drawn on Mr. Wen's HSBC account paid to his Shenwan account.

Payments by cheque to Mr. Wen's Shenwan account

650. As noted earlier, for her part eventually Mdm. Cynthia Chen acknowledged that she had written the description of the amount of money in both words and numerals on at least some of those cheques drawn on Mr. Wen's HSBC account in which the payee was 'SWSHK-Wen Lide'. Having been given the cheques by her husband, she did so at his direction. In doing so, we are satisfied that Mdm. Cynthia Chen knew and intended that the monies be paid into Mr. Wen's Shenwan account and that the proceeds be used to trade in Dan Form shares in that account.

Trading in Dan Form shares at overall increasing prices

651. The deposit of cash into Mr. Wen's HSBC account, followed by the deposit of cheques into his Shenwan account, was accompanied by active buying of Dan Form shares through Mr. Wen's Shenwan account at overall increasing prices. The order placed by Mr. Wen with Mdm. Lucy Tsui at 09:38 on 5 September 2016 was to buy 50,000 Dan Form shares at HK\$1.74 per share, whereas the orders placed by him on the afternoon of 6 September 2016 were to buy 50,000 Dan Form shares at HK\$1.96 per share. Then, at 09:30 on 7 September 2016, Mr. Wen placed an order to buy 450,000 Dan Form shares at HK\$2.10 per share.

652. We are satisfied that the aggressive willingness to pay more and more to buy Dan Form shares and to do so immediately after the opening of the market on 5 September 2016 was the

result of the knowledge of Mr. Wen and Mdm. Cynthia Chen of the agreement on a range of terms reached between the parties at the meeting on 2 September 2016, in particular that the offer price was HK\$2.75 per share.

6 September 2016

653. In the alternative, if we are wrong to make that determination that Mdm. Cynthia Chen was in possession of “inside information” at that date, nevertheless we are satisfied that she was so possessed after the close of the market on 6 September 2016.

654. From her conversation with Mr. Brian Liu, confirmed in the WhatsApp messages, sent to her by Mr. Brian Liu on and between 14:24 and 14:27, we are satisfied Mdm. Cynthia Chen knew that ASM now offered to, “sign binding SPA at fixed \$2.7 without adjustment mechanism”.⁶⁸⁰ In consequence of the WhatsApp messages she received from Mr. Brian Liu on and between 18:41 and 18:54 on 6 September 2016, Mdm. Cynthia Chen knew that the attempt, in the earlier WhatsApp messages, by Mr. Kin Chan to stipulate a lower price of HK\$2.7, had been abandoned and that ASM was willing, “to stick to 2.75”.⁶⁸¹ We are satisfied that, in consequence of receipt of all that information, Mdm. Cynthia Chen knew that the likelihood of a successful conclusion to the negotiations had increased significantly. For the reasons given earlier, we are satisfied that Mdm. Cynthia Chen shared that information directly or indirectly through Mr. Chim with Mr. Wen.

7 September 2016

(i) Trading in Dan Form shares

655. It is to be remembered, as noted earlier, that at 09:30 on 7 September 2016, Mr. Wen placed an order with Mdm. Lucy Tsui to buy 450,000 Dan Form shares at HK\$2.10 per share. We are satisfied, that the aggressively priced and significantly-sized order reflected Mdm. Cynthia Chen and Mr. Wen’s knowledge of the increased likelihood of a successful conclusion to the negotiations.

(ii) Cash deposits into Mr. Wen’s HSBC account

656. It is to be noted that on 7 September 2016, there were no fewer than seven cash deposits to Mr. Wen’s HSBC account, to a total of HK\$584,000. That was more than three times the

⁶⁸⁰ Core Bundle 1, pages 194-195.

⁶⁸¹ Core Bundle 1, page 196.

amount of cash deposited into the account on 6 September 2016.

(iii) HK\$100 million deposit

657. In WhatsApp messages sent to Mdm. Cynthia Chen by Mr. Brian Liu, on and between 14:32 and 14:47 on 7 September 2016, Mdm. Cynthia Chen was informed that the hitherto unspecified offer in the WhatsApp messages of 6 September 2016 to make a deposit was now stipulated to be HK\$100 million which, being 8% of the transaction price, was greater than the 5% usually required in Hong Kong property transactions.⁶⁸²

8 September 2016

658. In a WhatsApp message sent by Mr. Brian Liu at 00:21 on 8 September 2016, Mdm. Cynthia Chen was informed that, following a conversation between Mr. Kin Chan and Mr. Dai, that Mr. Kin Chan “...will bring our funder to see mr dai on Sunday”. We are satisfied that Mdm. Cynthia Chen’s response to Mr. Brian Liu by WhatsApp at 02:26 on 8 September 2016, “It looks quite smooth. 😊”, eloquently reflected what we find to be her assessment that the likelihood of a successful conclusion to the negotiations was now even more enhanced.

Conclusion

659. We accept Mr. Leung’s opinion that the information described above in existence at 8 September 2016, was ‘inside information’. We are satisfied that it was information known to Mdm. Cynthia Chen. So that, at the very latest, albeit that we are satisfied that it occurred earlier as set out above, Mdm. Cynthia Chen was in possession of ‘inside information’ on 8 September 2016.

Disbursement of the proceeds of trading in Dan Form shares in Mr. Wen’s Shenwan account

660. We are satisfied that Mdm. Cynthia Chen was a significant beneficiary of the ultimate disbursement of the proceeds of the sale of Dan Form shares in Mr. Wen’s Shenwan account on and between 29 September 2016 and 26 October 2016.

661. No real dispute is advanced in respect of Mr. Fordham’s fund flow analysis in which he calculated:

- (i) on and between 7 October 2016 and 31 October 2016, the amount of the ‘Sales Proceeds’ from dealing in Dan Form shares that were withdrawn from Mr. Wen’s

⁶⁸² Core Bundle 1, pages 221 and 225.

Shenwan account and deposited into his HSBC savings account, was HK\$6,787,961.40;

- (ii) on and between 7 October 2016 and 8 November 2016, HK\$5,646,000 of the Sales Proceeds were transferred from Mr. Wen's HSBC savings account to his HSBC current account;
- (iii) on 30 October and 1 November 2016, by three cheques drawn on his HSBC current account, a total of HK\$4,346,000 of the Sales Proceeds was transferred to Mr. Lam's HSB account ("Lam's Funds");
- (iv) on and between 14 November 2016 and 25 January 2017, by six cheques a total of HK\$4,096,000 of Lam's Funds was transferred from Mr. Lam's HSB account to Mr. Chim's HSB account ("Chim's Funds");
- (v) on and between 15 November 2016 and 27 January 2017, a total of HK\$3,860,527 was transferred from Mr. Chim's HSBC account to the Joint Account of Mr. Chim and Mdm. Cynthia Chen at HSB in nine remittances of which HK\$3,696,000 ("Joint Funds") were 'Chim's Funds';
- (vi) on and between 21 November 2016 and 28 February 2017, by twenty-nine remittances a total of HK\$3,223,786.46 was transferred from the Joint Account to Mdm. Cynthia Chen's account, of which a minimum of HK\$2,806,654.80 was funded from the Joint Funds.

Mdm. Cynthia Chen's explanations

Overall

662. As noted earlier, it was Mdm. Cynthia Chen's case that: she never directly or indirectly acquired Dan Form shares; she had no knowledge of Mr. Wen's purchase and disposal of Dan Form shares or the source of his funds to purchase them; and she never provided Mr. Wen with investment advice, in particular she had never disclosed inside information to Mr. Wen.

663. The focus of the evidence of Mdm. Cynthia Chen in respect of the fund-flow and the evidence on which she relied was that there were explanations, which refuted the inference being drawn that Mdm. Cynthia Chen was simply benefiting from the proceeds of insider dealing to which she was a party, having counselled or procured Mr. Wen to deal in Dan Form shares.

664. In simple terms, the explanation advanced by Mdm. Cynthia Chen was that her husband told her, first the sale proceeds of the two flats in Chevalier Garden, Shatin were taken by him to the Mainland. Although she made that assertion in terms in her Reply to the Commission, dated 9 June 2020, she gave no evidence of first-hand knowledge of that having occurred. She said that, secondly Mr. Chim told her that in Shanghai he made a loan or loans to Mdm. Cheung. Mdm. Cynthia Chen said that in Hong Kong Mr. Chim had shown her the original of a signed Memorandum of Loan, which evidenced a loan to Mdm. Cheung on 1 June 2015 for RMB 3,200,000 for 18 months. She produced to the Tribunal a photocopy of the Memorandum of Loan, which she testified was of the original document. Her mother had told her that she had found that photocopy in a book, belonging to Mdm. Cynthia Chen, in her uncle's house in Shanghai shortly before these proceedings began.

665. Mdm. Cynthia Chen said, thirdly that Mr. Chim told her that, shortly before the expiration of the 18 months of the loan period on 1 December 2016, Mdm. Cheung began to make repayment of the loan in instalments. Fourthly, her husband told her that, on his instructions, Mdm. Cheung made payments to Mr. Wen in Renminbi in the Mainland and that Mr. Wen instructed Mr. Lam Wai Ho to make payments in Hong Kong dollars to Mr. Chim to reflect those payments in Renminbi. Fifthly, Mr. Chim explained to her that Mr. Wen had told him that Mr. Lam held monies that he had transferred to him to buy property in Hong Kong, which monies he wished to return to the Mainland as Renminbi. Mr. Chim told her that explained the method of remittance from the Mainland of their joint interest in the monies that represented their sales proceeds of the two flats at Chevalier Garden.

(i) Sale proceeds of the two flats at Chevalier Garden

666. We readily accept that the two flats at Chevalier Garden were sold by Mdm. Cynthia Chen and Mr. Chim on 15 May 2015 for a total of HK\$8,400,000. The Land Registry records evidence that assertion. No doubt, payment for a transaction of this nature was made to a bank account or bank accounts. However, there is no evidence of any such payment or, more importantly, what were the net proceeds of the sale made available to Mdm. Cynthia Chen and Mr. Chim. No bank statements have been produced to the Tribunal that evidenced the deposit of those monies in any of the bank accounts of either Mr. Chim or Mdm. Cynthia Chen. For her part, Mdm. Cynthia Chen asserted in her second record of interview that, following the sales of the two flats:

“We probably had over 4 million (dollars) back then. So, it was transferred to the

account...”

She confirmed that was in 2015, but when asked if the money was in the Joint Account or elsewhere, she said, “I don’t remember.”⁶⁸³

(ii) Disbursement of the sale proceeds of the two flats

667. Similarly, no bank statements have been produced to evidence the withdrawal of any such deposits from the accounts of Mr. Chim and/or Mdm. Cynthia Chen, either in cash or by way of remittance agents or transfer to others or otherwise. There is no supporting evidence whatsoever of the bare assertions that the monies were transferred to the Mainland. Although the Commission had required both Mdm. Cynthia Chen and Mr. Chim to provide all supporting contemporaneous documents of their explanations, no relevant bank statements or remittance advices were provided. Given that the Memorandum of Loan, dated 1 June 2015, states that RMB 3,200,000 was loaned to Mdm. Cheung on that date, it is to be inferred that, if those monies had their provenance in the sale proceeds of the two flats, they were withdrawn from a bank account(s) and taken/or otherwise transferred to the Mainland in the period on and between 15 May 2015 and 1 June 2015.

(iii) Loan(s) to Mdm. Cheung

668. As noted earlier, in the three records of interview conducted of them in November 2018, two of Mdm. Cynthia Chen and one of Mr. Chim, although asked about what became of the sales proceeds of the two flats said to have been taken to the Mainland, neither of them made any mention whatsoever of a loan to Mdm. Cheung of RMB 3,200,000. As we have observed earlier, it is wholly implausible, given the relative size of the loan to their capital assets, that Mdm. Cynthia Chen would not have mentioned that to the Commission in her interviews, if such a loan had been made, more particularly if she had seen the Memorandum of Loan evidencing that loan, when it was produced to her in Hong Kong by her husband after the loan had been made.

669. Relevant to Mdm. Cynthia Chen’s evidence that her husband had produced to her the Memorandum of Loan, dated 1 June 2015, is the fact that in his record of interview Mr. Chim repeatedly denied to the Commission that there were any records evidencing his investments in the Mainland.

⁶⁸³ Witness Evidence Bundle 3; pages 1424-1428, counter #s 1620-1648.

670. The very first mention of a loan of any kind to Mdm. Cheung was made in their two replies to the Commission, dated 9 June 2020. Even then, there was no mention of the fact that the loan was of RMB 3,200,000.

671. In considering the weight to be given to the evidence of the existence of a loan of RMB 3,200,000 to Mdm. Cheung on 1 June 2015 by Mr. Chim, we take into account the paucity of information about Mdm. Cheung and the purpose of the alleged loan. There was no evidence of her domestic or business address, and very little evidence of the nature of her business. Further, we take into account that in her evidence Mdm. Cynthia Chen acknowledged that she had made no attempt even to locate Mdm. Cheung let alone to call her as a witness in these proceedings. Although she was said to live in Shanghai, that was no bar or even particular difficulty to her giving evidence in these proceedings. It is to be noted that the Tribunal regularly accommodates witnesses who are located outside the jurisdiction by taking their evidence by video-link. Indeed, that invitation was extended to the Specified Persons in the Directions given in these proceedings.

672. In the absence of evidence from Mdm. Cheung, there was no direct supporting evidence of the making of the alleged loan. Similarly, as noted earlier, Mdm. Cynthia Chen did not even ask Mr. Chim to give evidence in these proceedings, he being the other person apparently able to give first-hand knowledge of the making of the loan to Mdm. Cheung.

Conclusion

673. In all the circumstances, we are not satisfied that there was a loan made to Mdm. Cheung by Mr. Chim of RMB 3,200,000. We are not satisfied that the Loan Memorandum is a true document.

(iv) Payments by Mdm. Cheung to Mr. Wen in the Mainland

674. The fact that Mdm. Cynthia Chen made no attempt to locate or call Mdm. Cheung as a witness in the proceedings is also highly relevant to the alleged multiple payments by Mdm. Cheung to Mr. Wen in the Mainland, at the direction of Mr. Chim, of sums of money in Renminbi. In the absence of her evidence there was no supporting evidence of the bare assertions even of the making of those payments, let alone as to their nature, namely repayments of the alleged loan. It has been known throughout the proceedings that Mr. Wen has played no part whatsoever. Clearly, it was to be anticipated, as was the case, that there would be no evidence from Mr. Wen, let alone evidence supporting the alleged payments to

him by Mdm. Cheung.

Conclusion

675. In all the circumstances, we are not satisfied that there were any payments of Renminbi made to Mr. Wen by Mdm. Cheung.

(v) The payments to Mr. Lam Wai Ho

676. The explanation, for the transfer of HK\$4,346,000 from Mr. Wen's HSBC account to Mr. Lam's HSB account, advanced by Mr. Chim and adopted by Mdm. Cynthia Chen, that the monies were to fund the purchase of real estate in Hong Kong is risible. Although the payment of a total of HK\$4,346,000 was made by three separate cheques in the period of two days, it is clear from Mr. Wen's HSBC bank account statement, that the payment could have been made by one cheque. On Mr. Lam's account it is clear that no specific property had even been identified as one which Mr. Wen stated he wished to buy, let alone an agreement reached to buy a specific property. In those circumstances, transferring the monies from one Hong Kong dollar bank account to another in Hong Kong was clearly unnecessary and on any view wholly premature. Very little or nothing having happened in a search for a suitable property, on Mr. Lam's account, the operation was brought to an abrupt ending, "...out of the blue that he decided not to buy".

A consideration of Mr. Lam Wai Ho's account

677. In our consideration of the weight to be given to Mr. Lam Wai Ho's account of events in his record of interview, the Tribunal has had regard to the fact that in his record of interview Mr. Lam was the subject of some questioning by officers of the Commission, in which he was confronted with some relevant documentary evidence. On the other hand, the Tribunal has not had the opportunity of hearing Mr. Lam give evidence on oath in the Tribunal under questioning by counsel for the Commission and for Mdm. Cynthia Chen. Importantly, the Tribunal has not had the opportunity of putting its own questions to Mr. Lam. The Tribunal has approached an examination of Mr. Lam's answers and explanations in his records of interview mindful of those considerations, and by having regard to whether his answers and explanations were consistent or inconsistent with other evidence.

Conclusion

678. We are satisfied that the payment into the HSB account of Mr. Lam of the three cheques

drawn on Mr. Wen's HSBC account served the purpose, and was intended to serve the purpose, of helping to conceal the provenance of the monies that were ultimately paid into the account of Mdm. Cynthia Chen with HSB. It was an unnecessary layer in the flow of those funds. Those monies came from the trading of Dan Form shares in Mr. Wen's Shenwan account. The three cheques, dated 30 October and 1 November 2016, were paid into Mr. Lam's bank account shortly after the completion of the disposal of all Dan Form shares in Mr. Wen's Shenwan account on 26 October 2016, the Settlement Date for which final disposal was 28 October 2016.

8 November 2016 - withdrawal of HK\$250,000 in cash

679. As noted earlier, the first drawdown of monies from the total of HK\$4,346,000 deposited into Mr. Lam's account was a withdrawal from Mr. Lam's savings account on 8 November 2016 of HK\$250,000 in cash by Mr. Lam. We are satisfied that, in very large part, represented the repayment to him of his investment with Mr. Wen, with profits represented by the increased price of Dan Form shares, of the HK\$144,217 cheque drawn on Mr. Lam's HSB account deposited into Mr. Wen's Shenwan account on 24 August 2016, with which Dan Form shares had been bought and then sold at a profit.

(vi) Payments to Mr. Chim's account

680. The next disbursement of the monies deposited into Mr. Lam's account happened shortly afterwards. By a cheque, dated 11 November 2016 and cleared on 14 November 2016, HK\$450,000 was deposited into the account of Mr. Chim with HSB. That was the first of six cheques to a total of HK\$4,096,000 drawn on Mr. Lam's account paid to Mr. Chim's HSB account, the last one being cleared on 25 January 2017.

(vii) Payments: (i) from Mr. Chim's account to the Joint Account; and

(ii) from the Joint Account to Mdm. Cynthia Chen's account

681. As noted earlier, there was further layering in the disbursement of those monies first to the Joint Account of Mdm. Cynthia Chen and Mr. Chim and thence to Mdm. Cynthia Chen's own account at HSB. In the result, a minimum of HK\$2,806,654.80 of the Joint Funds was deposited into Mdm. Cynthia Chen's HSB account. They were the proceeds of the dealing in Dan Form shares in Mr. Wen's Shenwan account.

Disbursement of those funds from Mdm. Cynthia Chen's HSB account

682. As noted earlier, the disbursement of those funds in Mdm. Cynthia Chen's HSB account,

in the period on and between 21 November 2016 and 4 March 2017, included payments made in connection with the acquisition of car parking spaces and motorcycle parking spaces in her sole name, to a total of almost HK\$900,000.

The nature of the proceeds of dealing in Dan Form shares

683. Of course, we are mindful of the ‘mixed’ nature of the proceeds of dealing in Dan Form shares.

(i) 24 August 2016 - 31 August 2016

684. There was considerable trading in Dan Form shares on and between 24 August 2016 and 31 August 2016. That was before ‘inside information’ came into existence to the knowledge of Mdm. Cynthia Chen. Dan Form shares acquired in that trading were acquired at prices that resulted in profit being made when they were sold.

(ii) 2 September 2016 - 19 September 2016

685. We have found that ‘inside information’ came into existence, to the knowledge of Mdm. Cynthia Chen on 2 September 2016 and that it subsisted and was enhanced subsequently, to the knowledge of Mdm. Cynthia Chen. Shares acquired on 5 September 2016 and thereafter up and until 19 September 2016 were acquired with that knowledge at prices that resulted in profit being made when they were sold. Those profits were profits gained in dealing in Dan Form shares in possession of knowledge of that inside information.

Disbursements from Mr. Wen’s HSBC account of sale proceeds of Dan Form shares to accounts with which he appeared to be connected

I. Savings account

(i) 11 October 2016 - 1 November 2016: HSBC account of Mr. Wen and Mdm. Li Qian - HK\$395,300.46

686. On and between 11 October 2016 and 1 November 2016, by five withdrawals Mr. Wen transferred a total of HK\$395,300.46 to his joint account with Mdm. Li Qian. The first transfer of HK\$185,000 on 11 October 2016 exactly matched the transfer of that amount of money from Mr. Wen’s Shenwan account on 7 October 2016, that being the first of such transfers of Sales Proceeds.⁶⁸⁴

⁶⁸⁴ Expert Bundle 7, page 1507 (Appendix 5.1).

(ii) 1 and 4 November 2016: Mr. Wen's Grand Investment account - HK\$230,000

687. On 1 and 4 November 2016, HK\$230,000 and HK\$100 respectively were transferred to the HSBC account of Grand Investment (Securities) Limited. Mr. Wen's Grand Investment account reflected the deposit of the HK\$230,000 on 1 November 2016.⁶⁸⁵

688. It is to be noted that earlier, on 19 October 2016, a cheque for HK\$25,000 drawn on the Grand Investment account with OCBC Wing Hang Bank, debited to Mr. Wen's Grand Investment account, was deposited into Mr. Wen's HSBC account.⁶⁸⁶

(iii) 21 and 22 October 2016: Withdrawals in cash - HK\$315,000

689. On 20 October 2016 and 22 October 2016, two sums of cash, namely HK\$5,000, which transaction incurred a HK\$20 charge, and HK\$310,000 respectively were withdrawn from Mr. Wen's savings account. As Mr. Fordham noted, in the latter withdrawal the identity of Mr. Wen was confirmed by bank staff.

II. Current account

(iv) 24 October 2016: Wen Lijing's Shenwan Hongyuan account - HK\$1,300,000

690. On 24 October 2016, HK\$1,300,000 was paid into the account of Wen Lijing with Shenwan Hongyuan on a cheque drawn on the current account of Mr. Wen Lide with HSBC. On 20 October 2016, HK\$1,300,000, on which funds the cheque was met, had been transferred from Mr. Wen's savings account to his current account. In the course of the first record of interview conducted of Mdm. Cynthia Chen, it was suggested to her that Man Lai Zing (Cantonese) or Wen Lijing was Mr. Wen Lide's younger brother. She said that she had never heard of the name and did not know him at all.⁶⁸⁷

Conclusion

691. We are satisfied that the disbursement of monies from Mr. Wen's HSBC account, which had their provenance in the proceeds of the sale of Dan Form shares, bore clear and obvious signs of the division of some of those monies between Mdm. Cynthia Chen and Mr. Wen.

⁶⁸⁵ Exhibits Bundle 1A, page 372.

⁶⁸⁶ Exhibits Bundle 1B, pages 428-49; and 370. Expert Evidence Bundle 5, page 1427-23.

⁶⁸⁷ Witness Evidence Bundle 1; pages 458-459, counter #s 1196-1204.

CHAPTER 16
INSIDER DEALING

Mdm. Cynthia Chen

692. Sensibly, Ms. Tse takes no issue with proof of two of the elements of insider dealing, namely the listing status of Dan Form and that Mdm. Cynthia Chen, as company secretary, was a ‘connected person’ at all material times. We are satisfied that at all material times Dan Form was a listed corporation with its securities listed on the SEHK and that Mdm. Cynthia Chen was employed as company secretary of Dan Form and, as such, was a person connected with Dan Form.

693. For the reasons that we have given earlier, we are satisfied and have found that Mdm. Cynthia Chen was possessed of inside information relevant to Dan Form and knew that to be the case on 2 September 2016; alternatively, after the close of trading on 6 September 2016 or, in the further alternative, before the opening of trading on 8 September 2016.

694. We are satisfied that the information possessed by Mdm. Cynthia Chen was specific information not generally known to persons who are accustomed or would be likely to deal in the shares of Dan Form but would if generally known to them be likely to materially affect the price of Dan Form shares.

695. In determining the issue of whether the information was “likely” to materially affect the price of Dan Form shares, we have given effect to the Chairman’s direction that the Tribunal is to consider whether there was a “real prospect” of it having that effect. Nevertheless, we have no hesitation in determining that we are also satisfied on the balance of probabilities that it would have had that effect.

696. Further, we are satisfied that with that knowledge, on those separate dates, she disclosed that information to Mr. Wen knowing or having reasonable cause to believe that Mr. Wen would make use of the information for the purpose of dealing in Dan Form shares, thereby counselling or procuring him to do so, contrary to section 270(1)(c) of the Ordinance.

Mr. Wen Lide

697. We are satisfied that in buying Dan Form shares after 2 September 2016, Mr. Wen was dealing in the listed securities of Dan Form in possession of information which he knew to be inside information in relation to Dan Form, which he had received from Mdm. Cynthia Chen,

whom he knew to be connected with Dan Form and whom he knew or had reasonable cause to believe held the information as a result of being so connected with Dan Form.

698. We are satisfied that the information possessed by Mr. Wen was specific information not generally known to persons who are accustomed or would be likely to deal in the shares of Dan Form but would if generally known to them be likely to materially affect the price of Dan Form shares.

699. We are satisfied that in so dealing with the listed securities of Dan Form, Mr. Wen was culpable of misconduct, contrary to section 270(1)(e) of the Ordinance.

Trading in Dan Form shares in Mr. Wen's Shenwan account

700. For those reasons, in buying Dan Form shares in his Shenwan account:

- (i) to a total of 1,250,000 Dan Form shares on and between 5 September 2016 and 19 September 2016;

Mr. Wen was culpable of misconduct, contrary to section 270(1)(e) of the Ordinance.

Trading in Dan Form shares in Mr. Wen's Grand Investment account and Mdm. Li Qian's Grand Investment account

701. For those reasons, in buying Dan Form shares:

- (ii) to a total of 250,000 Dan Form shares on 6 September 2016 in Mr. Wen's Grand Investment account; and a total of 50,000 Dan Form shares on 12 September 2016 in Mdm. Li Qian's Grand Investment account;

Mr. Wen was culpable of misconduct, contrary to section 270(1)(e) of the Ordinance.

Directions

702. On issuing its Report, pursuant to section 262 of the Ordinance, the Tribunal will give Directions to the parties to provide for a further hearing date and a timetable for the service of any related, relevant evidence and written submissions relevant to the making of consequential orders.



Mr Michael Lunn, GBS
(Chairman)



Mr Chan Chun-wing, Bryan
(Member)



Ms Yuen Sze-ling, Vicky
(Member)

Dated the 5th day of June 2025